

195

# TRANSCRIPT OF RECORD.

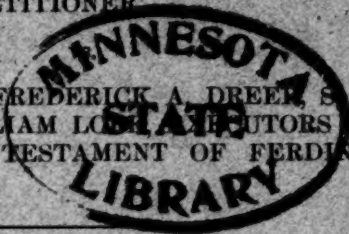
SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, ~~1912~~ 1914

No. ~~1000~~ 149

WILLIAM McCOACH, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST COLLECTION DISTRICT OF PENNSYLVANIA, PETITIONER

DUNDAS F. PRATT, FREDERICK A. DREER, S. HENRY NORRIS, AND WILLIAM LOE, ATTORNEYS OF THE LAST WILL AND TESTAMENT OF FERDINAND J. DREER, DECEASED.



ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

PETITION FOR CERTIORARI FILED APRIL 18, 1913.  
CERTIORARI AND RETURN FILED MAY 16, 1913.

(23641)

SUPREME COURT OF THE UNITED STATES,  
OCTOBER TERM, 1912.

No. 1066.

WILLIAM McCOACH, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST COLLECTION DISTRICT OF PENNSYLVANIA, PETITIONER,

VS.

DUNDAS F. PRATT, FREDERICK A. DREER, S. HENRY NORRIS, AND WILLIAM LORE, EXECUTORS OF THE LAST WILL AND TESTAMENT OF FERDINAND J. DREER, DECEASED.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

INDEX.

Transcript from the Circuit Court of the United States for the Eastern District of Pennsylvania:

	Original.	Print.
Docket entries.....	1	1
Writ of error.....	1	1
Citation.....	2	2
Petition for writ of certiorari.....	3	3
Exemplification of record in Court of Common Pleas No. 2 for Philadelphia County, Pa.—		
Docket entries.....	4	4
Præcipe for summons.....	4	4
Plaintiff's statement of claim.....	5	5
Exhibit "A"—Protest and denial.....	8	8
Exhibit "B"—Claim.....	9	9
Rule to file affidavit of defense.....	13	13
Writ of certiorari.....	14	14
Amendment to plaintiff's statement of claim.....	16	16
Exhibit "C."—Will of Ferdinand J. Dreer.....	16	16
Affidavit of defense.....	25	25
Plea.....	27	27

## Transcript from the Circuit Court of the United States for the Eastern

## District of Pennsylvania—Continued.

	Original.	Print.
Rule to plead.....	28	28
Order to place case on trial list.....	28	28
Suggestion of the death of certain plaintiffs.....	28	28
Rule for judgment for want of sufficient affidavit of defense.....	29	29
Order of court directing judgment.....	29	29
Præcipe for judgment.....	30	30
Assignment of error.....	30	30
Petition for writ of error.....	31	31
Clerk's certificate.....	32	32
Argument and submission.....	33	33
Opinion.....	33	33
Judgment.....	34	34
Clerk's certificate.....	35	35
Writ of certiorari.....	46	37
Stipulation as to return.....	49	37
Return to writ of certiorari.....	50	38

OCTOBER SESSION, 1905.

ASSUMPSIT.

E. Hunn DUNDAS F. PRATT, FREDERICK A. DREER, S. HENRY  
NORRIS and WILLIAM LORE, Executors of the last will  
and testament of FREDERICK J. DREER, dec'd.

61

vs.

J. Whitaker Thompson WILLIAM McCOACH, Collector of Internal Revenue for the  
First Collection District of Pennsylvania.

1906, February 28, Petition of Defendant filed.

1906, February 28, Certiorari for the removal of the case from the  
Court of Common Pleas, No. 2, County of Philadelphia, to this court  
allowed and issued.

1906, March 8, Certiorari returned with record annexed.

1906, October 12, Amendment to Plaintiff's statement filed.

1907, July 15, Affidavit of defense filed.

1907, October 15, Plea filed.

1907, October 16, Rule to Plead filed.

1907, November 19, Order to place on Trial List filed.

1908, May 23, Suggestion of death of DUNDAS T. PRATT and  
WILLIAM LORE, Executors, two of Plaintiffs, filed.

1908, May 23, Rule for judgment for want of a sufficient affidavit  
of defense filed.

1908, May 29, Order of the court directing judgment to be entered  
in favor of plaintiff and against defendant in sum of one thousand  
seven hundred and ninety-five and 15/100 (1,795.15) dollars.

1908, December 16, Praecipe for Judgment filed. Judgment ac-  
cordingly.

1908, December 17, Assignments of Error filed.

1908, December 17, Petition for Writ of Error filed.

1908, December 17, Order allowing Writ of Error filed.

1908, December 17, Writ of Error allowed and copy thereof lodged  
in Clerk's office for adverse party.

1908, December 17, Citation allowed and issued.

1908, December 22, Citation returned "service accepted" and  
filed.

UNITED STATES OF AMERICA,  
THE PRESIDENT OF THE UNITED STATES, } ss.:

To the Honorable, the Judge of the Circuit Court of the United  
States, for the Eastern District of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of  
the judgment of a plea which is in the said Circuit Court, before you,



or some of you, between Dundas F. Pratt, Frederick A. Dreer, S. Henry Norris and William Lore, Executors of the last will and testament of Frederick J. Dreer, deceased, and William McCoach, Collector of Internal Revenue for the First Collection District of Pennsylvania, a manifest error hath happened, to the great damage of the said William McCoach, Collector of Internal Revenue for the First Collection District of Pennsylvania, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Third Circuit, together with this writ, so that you have the same at the City of Philadelphia within thirty days, in the said United States Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, the seventeenth day of December, in the year of our Lord one thousand nine hundred and eight.

GEORGE BRODBECK,

Deputy Clerk of the Circuit Court of the United States.

(Seal)

Before McPHERSON, J.

Allowed by the Court.

Attest:

GEORGE BRODBECK,  
Deputy Clerk.

UNITED STATES OF AMERICA,  
THE PRESIDENT OF THE UNITED STATES, } ss.

To Dundas F. Pratt, Frederick A. Dreer, S. Henry Norris and William Lore, Executors of the last will and testament of Frederick J. Dreer, deceased, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Third Circuit, to be holden at the City of Philadelphia within thirty days, pursuant to a writ of error filed in the Clerk's Office of the Circuit Court of the United States, Eastern District of Pennsylvania, wherein William McCoach, Collector of Internal Revenue for the First Collection District of Pennsylvania, is Plaintiff in Error and you are Defendants in Error to show cause, if any there be, why the judgment rendered against the said Plaintiff in Error in the said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John B. McPherson, Judge, holding Circuit Court of the United States, this seventeenth day of December, in the year of our Lord one thousand nine hundred and eight.

BY THE COURT.

Attest:

GEORGE BRODBECK.

Service of the above Citation is accepted this twenty-first day of December, 1908.

E. HUNN,  
For Defendants in Error.

---

CIRCUIT COURT OF THE UNITED STATES, EASTERN  
DISTRICT OF PENNSYLVANIA.

To the Honorable, the Judge of the Circuit Court, of the United States, Eastern District of Pennsylvania:

The petition of William McCoach, Collector of Internal Revenue for the First Collection District of Pennsylvania, respectfully represents:

That suit has been commenced by summons in assumpsit against him as defendant by Dundas F. Pratt, Frederick A. Dreer, S. Henry Norris and William Lore, Executors of the last will and testament of Frederick J. Dreer, deceased, in the Court of Common Pleas, No. 2, for the County of Philadelphia, in the State of Pennsylvania, to December Term, 1905, No. 4924.

That the said suit is brought on account of an act done by the said William McCoach under the revenue laws of the United States, as Collector of Internal Revenue for the First Collection District of Pennsylvania, the said suit being to recover a certain sum of money paid on account of said plaintiffs to the said William McCoach as Collector as aforesaid, as internal revenue taxes.

Your petitioner respectfully prays that the said cause may be entered on the docket of your Honorable Court, and proceeded in as a cause therein originally commenced, and that a writ of certiorari be issued to the Clerk of your Honorable Court to the said Court of Common Pleas No. 2, for the County of Philadelphia to send to the said Circuit Court of the United States for the Eastern District of Pennsylvania, the record of the proceedings in the said cause, according to the provisions of the Act of Congress in such case made and provided.

And he will ever pray, etc.

W. McCOACH.

William McCoach, Collector of Internal Revenue for the First Collection District of Pennsylvania, being duly sworn according to law, doth depose and say that the facts set forth in the foregoing petition are true to the best of his knowledge and belief.

W. McCOACH.

Sworn and subscribed before me  
this 28th day of February, A. D.  
1906.

SAMUEL BELL,  
United States Commissioner.

I hereby certify that, as attorney for the above named petitioner, I have examined the proceedings against him, and have carefully inquired into all the matters set forth in the above petition, and that I believe the same to be true.

J. W. THOMPSON,  
United States Attorney,  
Attorney for the Petitioner.

Endorsed: U. S. C. C., E. D. of Penna. No. 61, October Session, 1905. Dundas F. Pratt, et al, vs. William McCoach, etc. Petition for Writ of Certiorari. Filed Feb. 28, 1906. Samuel Bell, Clerk. J. W. Thompson, U. S. Atty.

### EXEMPLIFICATION.

PHILADELPHIA COUNTY, }  
STATE OF PENNSYLVANIA. } *scd.*

Among the Records and Proceedings of the Court of Common Pleas, No. 2, for the County of Philadelphia, State of Pennsylvania, the following may be found as matter of File and of Record, at No. 4924, December Term, 1905, to wit:

### DOCKET ENTRIES,

December Term, 1905.

Hunn.

DUNDAS F. PRATT, FREDERICK A. DREER, S. HENRY NORRIS and WILLIAM LORE, Executors of the last Will and Testament of FREDERICK J. DREER, Decd.,

vs.

WILLIAM McCOACH, Collector of Internal Revenue for the First District of Penna.

Feby. 28, 1906, Plaintiffs' Statement and Rule to file an Afft. of Defense filed.

Summons Assumpsit.

Exit Feby. 24, 1906.

Ret. 4 Mon. Feby., 1906.

Mch. 1, 1906. Certiorari from Circuit Court of the U. S. for E. D. of Penna., of Oct. Sess. 1905, No. 61, brought into office.

Certified from the record this second day of March, A. D. 1906.

JOHN L. BURNS,  
pro Prothy. C. C. P.

C. P. No.      December Term, 1905.      No.

DUNDAS F. PRATT, FREDERICK A. DREER, S. HENRY NORRIS and WILLIAM LORE, Executors of the last Will and Testament of FREDERICK J. DREER, deceased.

vs.

WILLIAM McCOACH, Collector of Internal Revenue for the First District of Pennsylvania.

Issue Summons Assumpsit in above case, returnable fourth Monday of February, 1906.

HUNN,  
C.

Atty. for Plaintiffs.  
2/24/06.

To Prothy. C. P.

Endorsed: 4924. Dec. 1905. C. P. No. 2. Dundas F. Pratt, et al, executors &c. vs. William McCoach, Collector &c. Praecipe Summons Assumpsit. Filed Feb. 24, 1906. Hunter, Pro. Proth'y. Hunn, C. 438.

DUNDAS F. PRATT, FREDERICK A. DREER, S. HENRY NORRIS and  
WILLIAM LORE, Executors of the Last Will and Testament of FER-  
DINAND J. DREER, deceased,

vs.

WILLIAM MCCOACH, Collector of Internal Revenue for the First Dis-  
trict of Pennsylvania.

C. P. 2, Dec. T. 1905.

No. 4924.

#### PLAINTIFF'S STATEMENT OF CLAIM.

This action is brought by Dundas F. Pratt, Frederick A. Dreer, S. Henry Norris and William Lore, Executors of the Last Will and Testament of Ferdinand J. Dreer, deceased, against William McCoach, Collector of Internal Revenue for the First District of Pennsylvania, to recover the sum of sixteen hundred and ninety-two dollars and seventy-five cents, with interest thereon, from the Thirteenth day of July, A. D. 1903, which sum with interest as aforesaid, the plaintiffs aver is justly due and owing to them by the defendant upon the following cause of action.

The decedent died domiciled at Philadelphia on or about the Twenty-fourth day of May, A. D. 1902.

The defendant, William McCoach, at the time that he made the demand, hereinafter referred to, upon the plaintiffs, and at the time the plaintiffs made the payment to him under protest, was Collector of Internal Revenue for the United States Government for the First District in the State of Pennsylvania.

On or about the Twenty-ninth day of May, A. D. 1903, the said plaintiffs filed with the defendant a schedule of legacies or distributive shares arising from personal property of the decedent in their hands as Executors, in which *inter alia* it appears that they held for

Fred'k A. Dreer, a son of the Testator, Ten thousand (\$10,000.) dollars, the tax on which, if any at all were due, would amount to Seventy-five dollars, (\$75.00)

and that they also held for

Ferdinand J. Dreer, Junior, a son of the Testator, Ten thousand (\$10,000) dollars, the tax on which, if any at all were due, would amount to One hundred and twelve (\$112.50) dollars and fifty cents.

and that they also held for

Edwin Greble Dreer, a grandson of the Testator, Five thousand (\$5,000) dollars, the tax on which, if any at all were due, would amount to Fifty-six (\$56.25) dollars and twenty-five cents,

and that they also held for the said Edwin Greble Dreer, a grandson of the Testator, Thirty-eight thousand two hundred and ninety-three (\$38,293.05) dollars and five cents, the tax on which, if any at all were due, would amount to Four hundred and thirty (\$430.82) dollars and eighty-two cents.

and that they also held for Abigail D. Dreer (now Reed), a granddaughter of the Testator, Five thousand (\$5,000) dollars, the tax on which, if any at all were due, would amount to Fifty-six (\$56.25) dollars and twenty-five cents.

and that they also held for the said Abigail D. Dreer (now Reed), a granddaughter of the Testator, Thirty-three thousand seven hundred and fifty-three (33,753.52) dollars and fifty-two cents, the tax on which, if any at all were due, would amount to Three hundred and seventy-nine (\$379.73) dollars and seventy-three cents,

and that they also held for the said Frederick A. Dreer, a son of the Testator, Ten thousand nine hundred and seventy-five (\$10,975.68) dollars and sixty-eight cents, the tax on which, if any at all were due, would amount to Eighty-two (\$82.32) dollars and thirty-two cents,

and that they also held for the said Ferdinand J. Dreer, Junior, a son of the Testator, Fifteen thousand two hundred and sixty-four (\$15,264.82) dollars and eighty-two cents, the tax on which, if any at all were due, would amount to One hundred and seventy-one (\$171.73) dollars and seventy-three cents,

and that they also held for the said Edwin Greble Dreer, a grandson of the Testator, contingently, Twenty-five thousand nine hundred and eighty (\$25,980.68) dollars and sixty-eight cents, the tax on which, if any at all were due, would amount to Two hundred and ninety-two (\$292.28) dollars and twenty-eight cents,

and that they also held for the said Ferdinand J. Dreer, Junior, a son of the Testator, Three thousand one hundred and eighty-nine (\$3,189.00) dollars, the tax on which, if any at all were due, would amount to Thirty-five (\$35.87) dollars and eighty-seven cents.

On or about the First day of July, A. D. 1903, the defendant caused to be served on the plaintiffs a notice and demand for taxes assessed, which notice was in writing, in which the defendant notified the plaintiffs that a tax under the Internal Revenue Laws of the United States amounting to \$1,692.75 had been assessed upon the plaintiffs by the Commissioner of Internal Revenue and transmitted by the said Commissioner to the defendant for collection, and on said notice made demand upon the plaintiffs that said tax should be paid.

And thereafter, to wit, on or about the Thirteenth day of July, A. D. 1903, the plaintiffs made payment to the defendant of the sum of \$1,692.75, as required by the assessment and demand aforesaid, and in making such payment the plaintiffs did protest to the defendant and deny that under the provisions of the law the said tax had

been properly assessed upon the said Estate and that the said Estate was taxable under the Act of June 13, A. D. 1898.

That so much of the tax as is assessed upon the legacy in favor of Frederick A. Dreer, in which the amount taxable is fixed at \$10,000, and the tax is assessed at \$75.00, never fell due and no tax is properly assessable thereon.

That so much of the tax as is assessed upon the legacy in favor of Ferdinand J. Dreer, Junior, in which the amount taxable is fixed at \$10,000, and the tax is assessed at \$112.50, never fell due and no tax is properly assessable thereon.

That so much of the tax as is assessed upon the legacy in favor of Edwin Greble Greer, in which the amount taxable is fixed at \$5,000, and the tax is assessed at \$56.25, never fell due and no tax is properly assessable thereon.

That so much of the tax as is assessed upon the legacy in the shape of an annuity of \$2,500, payable to Edwin Greble Dreer, in which the amount taxable is fixed at \$38,293.05 and the tax is assessed at \$430.82, never fell due and no tax is properly assessable thereon.

That so much of the tax as is assessed upon the legacy in favor of Abigail D. Dreer (now Reed), in which the amount taxable is fixed at \$5,000, and the tax is assessed at \$56.25, never fell due and no tax is properly assessable thereon.

That so much of the tax as is assessed upon the legacy in the shape of an annuity of \$2,000, payable to Abigail D. Dreer (now Reed), in which the amount taxable is fixed at \$33,753.52, and the tax is assessed at \$379.73, never fell due and no tax is properly assessable thereon.

That so much of the tax as is assessed upon the residuary legacy in the shape of an annuity of \$8,000, payable to Frederick A. Dreer, in which the amount taxable is fixed at \$10,975.68, and the tax is assessed at \$82.32, never fell due and no tax is properly assessable thereon.

That so much of the tax as is assessed upon the residuary legacy in the shape of an annuity of \$8,000, payable to Ferdinand J. Dreer, Jr., in which the amount taxable is fixed at \$15,264.82, and the tax is assessed at \$171.73, never fell due and no tax is properly assessable thereon.

That so much of the tax as is assessed upon the contingent interest or legacy payable to Edwin Greble Dreer, in which the amount taxable is fixed at \$25,980.68, and the tax is assessed at \$292.28, never fell due and no tax is properly assessable thereon.

That so much of the tax as is assessed upon the contingent interest or legacy payable to Ferdinand J. Dreer, Junior, in which the amount taxable is fixed at \$3,189.00, and the tax is assessed at \$35.87, never fell due and no tax is properly assessable thereon.

A copy of said protest and denial is hereunto annexed as "Exhibit A."

And thereafter, to wit, on or about the second day of September, A. D. 1903, the plaintiffs, pursuant to the Act of Congress in such case made and provided, made claim for the amount of the taxes as are refundable under the law of the United States, and did cause a writing to be filed with the defendant in the form prescribed by the said Commissioner of Internal Revenue, of which writing a copy is hereto annexed as "Exhibit B."

Wherefore the plaintiffs do aver that the assessment made upon them, under which said tax was paid, was made without authority of law and that payment of said tax was unlawfully exacted of them and therefore they bring this suit.

(Signed) S. HENRY NORRIS,  
(Signed) E. HUNN, for Exrs., &c.

STATE OF PENNSYLVANIA, } ss.  
CITY OF PHILADELPHIA, }

S. Henry Norris being duly sworn according to law deposes and says that he is one of the Executors of the last Will and Testament of Ferdinand J. Dreer, deceased, and one of the plaintiffs in the above entitled case: that the allegations set forth in the foregoing statement of claim are just and true, to the best of his knowledge, information and belief.

(Signed) S. HENRY NORRIS.

Sworn and subscribed before me this 28th day of February, A. D. 1906.

(Signed) THOMAS A. MACDONALD,

Notary Public.

(Seal)

Commission expires Jan. 16, 1909.

# EXHIBIT "A."

WILLIAM McCOACH, Esq.,

Collector of Internal Revenue,

Philadelphia, 5/29/1903.

My dear Sir:—In the matter of the Estate of Ferdinand J. Dreer, late of Philadelphia, deceased, the Executors have endeavored to render to you the Legacy Return correctly as to calculations, and according to the rulings of your office, as they understand them.

Nevertheless, the said Return is respectfully made under protest and reserving all rights of objection and exception.

I would respectfully ask that inasmuch as all information in the premises is set forth in this Return with a copy of the decedent's will and lists as required, if any errors, mathematical, or as to disposition of property or otherwise, shall appear, the tax be assessed according to the requirements of your office, and that I be advised of the reasons for your action; which request is not to be construed as an admission, but is made only to save trouble and to expedite settlement.

I am very respectfully yours,

(Signed) E. HUNN,

Atty. for Executors of said Estate.

Phila., 7/11/1903.

EST. OF FERDINAND J. DREER, DEC'D.

W. McCOACH, Esq.,

Collector of Internal Revenue, Phila., P. O.

Dear Sir:—Herewith find check, your order, No. 72, on Real Estate Title & T. Co., from Executors of above Estate, for Sixteen hun-



dred and ninety-two and 75/100 dollars, for Legacy taxes as per your notice of July 1, 1903, which is paid under protest.

Yours very truly,  
(Signed) E. HUNN,  
Atty. for Est. Ferdinand J. Dreer, dec'd.

### EXHIBIT "B."

Form 46—Revised April, 1901.

Claim Under Series 7, No. 14, Revised and Series 7, No. 27, Supplement No. 1, For Taxes Improperly Paid, or Refundable Under Remedial Statutes and For Amounts Paid For Stamps Used in Error or Excess.

### U. S. INTERNAL REVENUE.

STATE OF PENNSYLVANIA, }  
COUNTY OF PHILADELPHIA. } ss.:

S. Henry Norris, of the\* City of Philadelphia, and State and County aforesaid, being duly sworn according to law, deposes and says, that† he is one of the Executors and Trustee of Ferdinand J. Dreer, Late of the said City of Philadelphia, deceased, that he was not engaged in business; that upon the First day of July, A. D. 1903, he was assessed an internal-revenue tax of Sixteen hundred, ninety-two and 75/100 dollars‡ (\$1,692.75) for Legacy Taxes due the United States of America, which amount the said executors afterwards, on the 13th day of July, A. D. 1903, paid to W. McCoach, Esq., Collector of Internal Revenue for the First District of the State of Pennsylvania, and which amount, as this deponent verily believes, should be refunded for the following reasons, viz:

1. Because no residue of personal property bequeathed to the Trustees could possibly be either ascertained or paid over by the Executors to themselves as trustees before July 1st, 1902, nor was any such residue so paid before that date and the amount of \$157,456.75, on which the tax of \$1,692.75 was paid, was not taxable under the Act of June 13th, 1898, nor its amendments.

2. Because the legacies of \$25,980.68 to Edwin Greble Dreer and \$3,189.00 to Ferdinand J. Dreer, on which the tax of \$328.15 was paid, are contingent interests exempt from taxation under the Act of June 27, 1902.

And this deponent now claims that, by reason of the payment of the said sum of Sixteen hundred and ninety-two and 75/100 dollars, he is justly entitled to have the sum of Sixteen hundred, ninety-two and 75/100 dollars refunded, and he now asks and demands the same or such greater amount as the Commissioner of Internal Revenue may find to have been erroneously paid, or to be refundable under

\* Give post-office address.

† If a member of a firm, state the fact.

‡ State for or upon what the tax was assessed or the stamps affixed.



remedial statutes. And this deponent further makes oath that he has not heretofore presented any claim for the refunding of the above amount or any part thereof.\*

(Signed) S. HENRY NORRIS.

Sworn to and subscribed before me, this 2nd day of September, A. D. 1903.  
(Seal)

(Signed) ISAAC L. MILLER,  
Notary Public.  
Commission expires Feb. 24, 1907.

(Ed. 1 3 1902 15,000.)

### DEPUTY COLLECTOR'S AFFIDAVIT.

I, \_\_\_\_\_ Deputy Collector, \_\_\_\_\_ Division, \_\_\_\_\_ District, being duly sworn according to law, depose and say, that I have *personally* investigated the statements made in the within affidavits,† \_\_\_\_\_ and from the best information I can obtain, after careful inquiry, I believe such statements to be in all respects just and true.  
This claim was received by me \_\_\_\_\_, 190

\_\_\_\_\_  
Deputy Collector,  
\_\_\_\_\_  
Division, \_\_\_\_\_ District.

Sworn to and subscribed before me, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190

### CERTIFICATE OF EXAMINATION OF RECORDS IN OFFICE OF COMMISSIONER OF INTERNAL REVENUE.

I hereby certify that, from present personal examination, I find the sum of \_\_\_\_\_ dollars and \_\_\_\_\_ cents reported against the said \_\_\_\_\_ as \_\_\_\_\_ on \_\_\_\_\_, line \_\_\_\_\_ of the list on Form \_\_\_\_\_ for \_\_\_\_\_; also the sum of \_\_\_\_\_ dollars and \_\_\_\_\_ cents reported against \_\_\_\_\_ as \_\_\_\_\_ on \_\_\_\_\_, line \_\_\_\_\_ of the list on Form \_\_\_\_\_ for \_\_\_\_\_, now on file in the office of the Commissioner of Internal Revenue; and that the tax included in the Collector's aggregate receipt for the said list on file in this Office. Said receipt amount to \$ \_\_\_\_\_, and \$ \_\_\_\_\_, respectively.

Dated \_\_\_\_\_, 190

\_\_\_\_\_  
Clerk Internal Revenue Office.

\* If a claim has been presented before, state the fact in lieu of this.  
† See instructions in Series 7, No. 14, Revised, page 18.

## COLLECTOR'S CERTIFICATE.

I hereby certify that I have carefully investigated the matters set forth in the within affidavit of \_\_\_\_\_ and am satisfied that the statements made by \_\_\_\_\_ are in all respects just and true, except \_\_\_\_\_

I further certify that I find, upon personal examination of the lists now on file in my office, assessments as follows:

Name.	Article.	List.	Page.	Line.	Amount.	Paid to—	Monthly payment.

Of the above amounts, \$ \_\_\_\_\_ and \$ \_\_\_\_\_ are included in the aggregate receipts for the lists, amounting to \$ \_\_\_\_\_ and \$ \_\_\_\_\_, respectively.

I further certify that this claim was received by me \_\_\_\_\_, 190 \_\_\_\_\_, and that no claim for the refunding of any of the above assessments has heretofore been presented, and that no portion of the amount claimed was paid on a compromise or abated as uncollectible or erroneous.\*

\_\_\_\_\_  
Collector.

Dated \_\_\_\_\_, 190 \_\_\_\_\_

\_\_\_\_\_  
District,

## INSTRUCTIONS IN REGARD TO PREPARATION OF CLAIM.

No. 1. All blank spaces provided in the claim, on page 1, and in the Deputy Collector's Certificate and Collector's Certificates, on pages 2 and 4, must be properly filled. The Collector's Certificate, on page 2, must be signed by the Collector, Acting Collector, or Deputy Collector in charge in all cases. The certificate on page 4 should be signed only in cases where the claim is for amounts paid for stamps.

No. 2. Certificates of purchase stamps should include all stamps referred to in the claim; also payments of all special taxes upon kinds of business mentioned, liable thereto, and when paid in duplicate.

No. 3. Affidavits must be properly attested by someone having authority therefor. Any person other than an internal revenue offi-

\*If the claim has been presented before, or if the amount was paid on a compromise or abated, the fact should be stated.

When two or more assessments are referred to in the claim, the page, line, and form of each and every assessment should be given as indicated in the above certificates.

cer administering an oath or affirmation must show by seal or certificate, from the proper authority, that he is qualified to do so. Affidavits may be made before any internal-revenue officer authorized to administer oaths, without fee. An officer in signing a jurat should give the title of his office.

No. 4. In claims arising on account of special-tax stamps it is not sufficient to state that the claimants have done no business for which they would be liable to special tax. Affidavits should be furnished containing specific denial as to each and all of the acts involving liability to special tax, as found in the statute imposing the tax; for instance, in the case of a **RETAIL LIQUOR DEALER**: That from -----

----- to ----- he neither "sold nor offered for sale any foreign or domestic distilled spirits, wines, or malt liquors in less quantities than five wine gallons at the same time,"

No. 5. In cases where two special-tax stamps of the same kind have been issued for the same period and place to the same person or firm, an affidavit as above should be furnished, adding thereto the words, "*except in one place (or more, as the case may be), for which he ha paid the special tax required by law.*"

No. 6. Where, in case of dissolution of a firm which had paid special tax, the remaining partner or partners have been required to pay new special tax for the unexpired portion of the time for which tax was paid by the original firm, and claim the refunding of the tax paid, it should be established that from -----

-----, the successor carried on the same business as the original firm, and that during such period no person, not a member of the original firm, was taken into partnership.

No. 7. If the period for which the stamp was issued has expired, the affidavit furnished under instructions Nos. 4 and 6 should cover the whole period. If the period has not expired, the affidavit should cover the period from the first day of the first month for which the stamp was issued to the time of making the affidavit.

No. 8. A claim for refunding should be made in the name of the party assessed, if living; if he is dead, there should be evidence of his death, and the claim should be made in the name of the executor or administrator. Certified copies of the letters of administration or letters testamentary, or other similar evidence, should be annexed to the claim to show that the claimant is administrator, etc.

The affidavit may be made by an agent of the party assessed; but, in such a case, there should be evidence of the agency, and of the sources of the agent's knowledge concerning the case in question.

When a firm is the claimant, the claim should be in the name of the firm; but the members of the firm should swear, each for himself, to the facts set forth, including that of membership, and should subscribe their own individual names. The artificial person, to wit, the firm, can not make oath.

No. 9. When a claim for refunding is made on the ground of a duplicate assessment and payment, the collector will certify to the duplicate assessment and payment on Form 46, giving the full amount both of the assessment and of the payment, and will also give the page, list, and line, in each case.

The collector will, in all cases, insert in his certificate the *full amount of the assessment, and not simply the amount claimed.*

No. 10. With each claim for the refunding of money paid for tax-paid spirit-stamps purchased to replace lost stamps (which claim should be made on Form 46), there should be filed a statement showing the serial numbers of the lost stamps, and the serial numbers of the stamps which replace them, the serial numbers of the packages for which the lost stamps were purchased, and the fact that the new stamps were attached to said packages, and the date of purchase of each lot of stamps. Evidence should also be filed showing in whose possession the lost stamps were at the time of the loss, the manner of loss and circumstances connected therewith, and the efforts made to recover the stamps. A bond should also be filed with each claim, in double the amount claimed, with two or more sureties approved by the collector, indemnifying the United States against loss in case the missing stamps should be used. A form of bond for such cases has been prepared, and will be furnished to collectors on application.

#### CLAIMS FOR SUMS RECOVERED BY SUIT.

No. 11. Claims for sums of money recovered by suit for any of the causes, and against any of the officers enumerated in section 3220, Revised Statutes, should be made upon Form 46. The claimant should state the grounds of his claim under oath, giving the names of all the parties to the suit, the cause of action, date of its commencement, the date of the judgment, court in which it was recovered and its amount. To this affidavit there should be annexed a duly certified copy of the record of the court in the case, and a certificate of probable cause.

#### FORM 46.—REVISED.

#### U. S. INTERNAL REVENUE.

#### CLAIM FOR REFUNDING TAXES COLLECTED.

No. in District Record, .....  
 No. in Draft Record, .....  
 ..... Claimant.  
 Address, ..... , Collector,  
 ..... District of .....  
 Nature of tax .....  
 Basis of claim .....  
 .....  
 Amount claimed, \$ .....  
 Amount allowed, \$ .....  
 Examined and submitted for .....  
 ..... 190 .., by .....  
 No. ....

# COLLECTOR'S CERTIFICATE AS TO PURCHASE OF STAMPS.

(Other than Special-Tax.)

I HEREBY CERTIFY that it appears from the records of my office that the stamp referred to in the within claim was purchased as follows:

Date of purchase.	By whom purchased.	Kind of stamps.	Denomination.	Number.	Amount paid.		
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....

## SPECIAL-TAX STAMPS

(In connection with which penalties have been assessed.)

Date of issue.	Kind of stamp.	Serial numbers.	To whom issued.	For period commencing—	Place of business: Locality, street and number.	Amount paid.		
.....	.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....	.....

Dated ....., 190

Collector,

District,  
(See Instruction No. 1, Page 3.)

Endorsed: 4924. Dec. 1905. C. P. No. 2. Pratt et al, Executor, &c., vs. Wm. McCoach, Collector, etc. Plaintiffs' Statement. Enter Rule on the Defendant to file affidavit of defense within fifteen days, or judgment sec. reg. E. Hunn, C. for Pltfs. C. P. Filed Feb. 28, 1906. Fletcher Pro. Proth'y Hunn, C. for Pltfs.

UNITED STATES OF AMERICA,  
EASTERN DISTRICT OF PENNSYLVANIA, } *set.*

THE PRESIDENT OF THE UNITED STATES,

To the Honorable the Judges of the Court of Common Pleas, No. 2,  
for the County of Philadelphia, Greeting:

WHEREAS, lately in your said Court a suit was commenced by summons assumpsit against William McCoach, Collector of Internal Revenue for the First Collection District of Pennsylvania, by Dundas F. Pratt, Frederick A. Dreer, S. Henry Norris, and William Lore, Executors of the last will and testament of Frederick J. Dreer, deceased, which said suit, as it is said, is still pending before you in the said Court of Common Pleas, No. 2, December Term, 1905, No. 4924, undetermined, and whereas, on the application of the said William McCoach, Collector, &c., to the Circuit Court of the United States, for the Eastern District of Pennsylvania, in the Third Circuit, on a suggestion supported by proper evidence, that the said suit was brought on account of an act done by him, under color of his office, as Collector of Internal Revenue for the First Collection District of Pennsylvania, the said suit having been brought to recover certain moneys paid by the said Plaintiff, to the said William McCoach, Collector, &c., aforesaid, for internal revenue taxes claimed to be due and owing from the said Plaintiffs to the United States of America, and praying that a writ of Certiorari may be immediately issued by the Clerk of the said Circuit Court of the United States, directed to the said Court of Common Pleas No. 2 to send to the said Circuit Court of the United States, the Record and Proceedings in the said cause, according to the provision of the Act of Congress, in such case made and provided.

Wherefore you are hereby commanded to transmit, under your Seal, the Record and proceedings of the said suit, with all things thereunto relating, unto the said Circuit Court of the United States, to be holden at Philadelphia, for the Eastern District of Pennsylvania, in the Third Circuit, on the first Monday of March, plain and distinctly, in as full and ample manner as it now remains before you; together with this writ, so that the said Circuit Court of the United States may be able therein to proceed and do what shall appear of right ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 28th day of February, A. D. 1906, and in the 130th year of the Independence of the United States.

SAMUEL BELL

Clerk of Circuit Court, U. S.

(Seal)

To the Honorable, the Judges of the Circuit Court of the United States, sitting in the Eastern District of Pennsylvania:

The record and process and all things touching the same, so full and entire as before us they remain, we certify and send, as within we are commanded.

WM. W. WILTBANK (L.S.)

Mar. 7, 1906 (L.S.)

Endorsed: 4924. Do. 5. No. 61. C. P. No. 2. Oct., Sess 188, 1905. Circuit Court, U. S. Dundas F. Pratt et al. trdg. &c. v. Wm. McCoach, Collector, &c. Writ of Certiorari. Mch. 1, 1906. Brought into office. C. B. R. Dep. Pro. Filed Mar. 8, 1906. Samuel Bell, clerk.

## U. S. CIRCUIT COURT.

October Sessions, 1905.

No. 61.

PRATT et al. v. McCROACH.

And now this Tenth day of October, A. D. 1906, by leave of Court, the Plaintiffs by E. Hunn their Attorney amend their Statement filed in above case as follows by adding to the second clause of the first page of the said Statement the following words:

"Leaving his last Will and Testament which was duly proved at Philadelphia in Pennsylvania on the Fifth day of June, A. D. 1902, and is recorded in the Registers' office at Philadelphia in Will Book No. 241, page 30, etc., a true copy of which said Will and Testament is hereunto annexed, marked Exhibit C."

And by adding to the end of said Statement the following true printed copy of the said last Will and Testament marked Exhibit C.

E. HUNN.

Having been duly affirmed says that the statements contained in the foregoing Amendment are true to the best of his knowledge and belief.

E. HUNN.

Affirmed and Subscribed before me this Tenth day of October, 1906.

(Signed) JOHN G. FORD,  
Notary Public.

Commission expires February 2, 1916.

(Seal)

---

"EXHIBIT C."

## WILL OF FERDINAND J. DREER.

CITY AND COUNTY OF PHILADELPHIA, } ss.:  
COMMONWEALTH OF PENNSYLVANIA, }

*By the tenor of these presents, I, JACOB SINGER, Register of the Probate of Wills and Granting Letters of Administration in and for the City and County of Philadelphia, in the Commonwealth of Pennsylvania.*

DO MAKE KNOWN TO ALL MEN, That on the Fifth day of June, A. D. 1902, at Philadelphia, before me, was proved and approved the last Will and Testament of Ferdinand J. Dreer, deceased (a true copy whereof to these presents annexed), having, whilst he lived and at the time of his death, divers Goods, Chattels, Rights and Credits within the said Commonwealth; by reason whereof the approbation and insinuation of said last Will and Testament, and the committing administration of all and singular the Goods, Chattels, Rights and Credits which were of the said deceased; and also the auditing



the accounts, calculations and reckonings of the said administration and absolute care of the same, to me are manifestly known to belong; and that administration of all and singular the Goods, Chattels, Rights and Credits of said deceased any way concerning his last Will and Testament is committed to Dundas T. Pratt, Fred'k A. Dreer, S. Henry Norris and Wm. Lore, Executors, in the said Testament named; they having first been duly qualified well and truly to administer the Goods, Chattels, Rights and Credits of the deceased, and make a true and perfect inventory thereof and exhibit the same into the REGISTER'S OFFICE OF PHILADELPHIA, on or before the fifth day of July next, and to render a just and true account, calculation and reckoning of the said administration, on or before the fifth day of June, one thousand nine hundred and three (1903) or when lawfully required; and also to diligently and faithfully regard and well and truly comply with the provisions of the Act relating to Collateral Inheritance.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of Office, at Philadelphia, this fifth day of June, in the year of our Lord one thousand nine hundred and two.

The said testator died on the twenty-fourth day of May, 1902, at 6.30 o'clock, p. m., as per affidavit filed.

CHAS. IRWIN,  
*Deputy Register.*

FEES.

Letters Testamentary.....	\$25.50
Filing Renunciation.....	
Certificate.....	2.50
Documentary Stamps.....	
Paid.....	\$28.00

I Ferdinand J. Dreer of the City of Philadelphia late Goldsmith hereby makes this my last will and testament in the manner following:

*First.*—I direct that my funeral shall be conducted in a plain manner and I desire that my relatives and very near friends only may be invited to attend my burial.

*Second.*—I give unto my daughter in law Louisa Greble Dreer wife of my son Frederick A. Dreer my five shares of stock of the Academy of Music and my share of stock of the Academy of Fine Arts, also my horses, carriages harness and all stable furniture.

I give and bequeath to each of my two sons Frederick A. Dreer and Ferdinand J. Dreer Junior the sum of Ten thousand Dollars to be paid to them by my executors within one year after my decease.

I give to my niece Mary Emma Johnson of Newark New Jersey an annuity of One thousand Dollars during her life clear of all taxes and to be paid quarterly from and after my decease.

I give to my cousin Elizabeth Harrison an annuity of Three hundred Dollars during her life clear of all taxes, the first payment to be made at the expiration of one year from my decease.



I give to Alexander A. Norcross of Newark New Jersey the sum of One Thousand Dollars clear of all taxes and to be paid within two years after my decease.

I give to each of my nephews Edwin F. Smith and William H. Smith the sum of Five thousand Dollars clear of all taxes and to be paid within three years after my decease, and in the event of the death of either of them I give the said sum to such children as he may leave to survive him and the issue of such of them as may then be deceased, such issue to take the parents share.

I give to my nephew Theodore Smith an annuity of One thousand Dollars for life payable quarterly from and after my decease clear of all taxes.

I direct that all of the above bequests be paid in cash or securities at the option of my executors.

*Third.*—I give devise and bequeath my lot in Woodland Cemetery to my two sons Frederick A. Dreer and Ferdinand J. Dreer Junior as a burial lot for themselves their wives and children. Having erected a granite monument on said lot I do not wish any other monument erected; low granite stones may be placed at the foot of future graves on which may be cut the name of deceased. All other inscriptions may be placed on the monument. I do not wish any mounds made over the graves and I give my executors the sum of Eight hundred Dollars in trust to invest the same and use the income derived therefrom in keeping the said lot monument and railing in good condition and planting roses and other flowers. With the consent of my sons, or if they be deceased then of their children my Executors may pay said sum of Eight hundred Dollars or transfer the securities in which it may be invested to the Woodland Cemetery Company and take from said Company an obligation to use the income derived therefrom in the manner and for the purposes I have herein directed.

*Fourth.*—I give devise and bequeath unto my Executors and the survivors and survivor of them my farm of Twenty six Acres near Bryn Mawr on the Old Gulf Road now occupied by the three daughters and three of the sons of Catharine and William Schallioll viz. Theodore, William Henry and Peter Schallioll in trust to permit the said three daughters and three sons to occupy the same without paying any rent therefor they paying the taxes and insurance thereon and keeping the fences and place in repair until my Executors shall deem it for the interest of my estate to sell the same, when I authorize my Executors to sell the said farm either at public or private sale for cash or partly for cash and partly on mortgage and thereupon good and sufficient deed or deeds to make and deliver to the purchaser or purchasers thereof free and clear of all taxes herein declared and from the lien of all legacies and annuities herein given and bequeathed and without liability on the part of the purchaser or purchasers to see to or be responsible for the application of the purchase money and I direct my Executors to forthwith pay over the net proceeds of the said sale to the said three daughters and three sons or to such of them as may then be living and to the issue of such of them as may then be deceased such issue to take the parents share.

I also give to each of the said three daughters of the said Catharine and William Schallioll the sum of One thousand Dollars clear of all taxes and to be paid within one year after my decease.

I authorize my Executors and my two sons at their option to build a picture gallery at "The Hayes Mechanics Home" at a cost to my estate of about Five thousand Dollars or Six thousand Dollars according to a plan I have in my fire proof.

*Fifth.*—I give to my grandson Edwin Greble Dreer my monogram watch and opal and diamond stickpin and I give to him the sum of Five thousand Dollars to be paid to him within one year after my decease and I also give him an annuity of Twenty five hundred Dollars during his life payable quarterly the first payment thereof to be made at the expiration of three months after my decease without the said annuity or any part thereof being in any manner liable or subject to his debts contracts or engagements and so that he shall not assign or otherwise dispose of the same by way of charge or in the way of anticipation, and I authorize him to dispose of by his will Twenty thousand Dollars of the sum of Sixty one thousand two hundred and fifty dollars next hereinafter mentioned, and I give to any children and issue of deceased children he may leave to survive him the sum of Sixty one thousand two hundred and fifty Dollars unless he disposes of the said Twenty thousand Dollars in which case I give them the sum of Forty one thousand two hundred and fifty Dollars but if he should die without issue living at the time of his decease the said sum of Sixty one thousand two hundred and fifty Dollars or Forty one thousand two hundred and fifty Dollars shall form part of my residuary estate.

*Sixth.*—I give to my grand daughter Abigail Dickinson Read late Abigail Dickinson Dreer the sum of Five thousand Dollars to be paid her within one year after my decease, and I give her for life the net income of the house No. 37 South Nineteenth Street in the City of Philadelphia and an annuity of Two thousand Dollars for life payable quarterly the first payment of the said income and annuity to be made at the expiration of three months from my decease, without the said income or annuity or any part thereof being in any manner liable or subject to her debts contracts or engagements and so that she shall not assign or otherwise dispose of the same by way of charge or in the way of anticipation, and I authorize my said grand daughter to dispose of by her will Twenty thousand Dollars of the sum of Fifty thousand Dollars next hereinafter mentioned, and I give and devise to any children and issue of deceased children she may leave to survive her the said house and the sum of Fifty thousand Dollars unless she disposes of the sum of Twenty thousand Dollars above mentioned in which case I give them the said house and the sum of Thirty thousand Dollars, but if she should die without issue living at the time of her death the said sum of Fifty thousand Dollars or Thirty thousand Dollars shall form part of my residuary estate.

*Seventh.*—At the expiration of ten years from my decease or sooner if in the opinion of my Executors the surplus on hand will warrant the payment I direct my Executors to divide into fifty six parts a sum of money which in their judgment is as near as may be the amount of the surplus income of my estate at that time after all payments herein ordered have been made and I give the said sum to the thirteen institutions and in the proportions following

Ten parts to the Hayes Mechanics Home upon condition that the same shall be invested and the income applied to keeping the memo-

rial buildings erected by me in perfect repair, keeping the grounds of said Home in order, furnishing clothing to such of the inmates as may require it and have no friends to supply it, and for paying one half the entrance fee for such cabinet makers and jewelers as may desire to enter the Home but have not the means to pay the whole entrance fee, and any surplus for the support of the said Home. At every Thanksgiving dinner of the said Home a menu shall be printed specifying the name of the giver as a lasting memorial to him.

Three parts to The Home for Aged and Infirm Colored Persons at the corner of Belmont and Girard avenues.

Two parts to the Trustees of Calvary Presbyterian Church on Locust Street above Fifteenth Street upon condition that the same shall be invested and the income used for the benefit of the Sunday School connected with the said Church.

Three parts to The Frederick Douglass Hospital and Training School in the City of Philadelphia for the use of the said Hospital and Training School.

Five parts to the Home of Industry for Discharged Prisoners now at Seventy third and Paschall Streets.

Five parts to the Society for the Prevention of Cruelty to Children now on South Broad Street above Walnut Street.

Five parts to the Southern Home for Destitute Children now on South Broad Street.

Two parts to the Presbyterian Home for Widows and Single women at Fifty eighth Street and Greenway Avenue.

Five parts to the Historical Society of Pennsylvania upon condition that the same shall be used to add to, protect and preserve the Dreer Collection.

Three parts to The Womens Christian Association at Eighteenth and Arch Streets as a memorial to my deceased wife Abigail Dickinson Dreer.

Two parts to The Presbyterian Hospital in Philadelphia.

Ten parts to The German Hospital in Philadelphia upon condition that the same shall be used for two free beds as memorials to my father Frederick Dreer and my mother Fredericka Augusta Dreer and that my children shall have the right to name the occupants of said beds, and

One part to The Berean Manual Training and Industrial School in the Northwestern section of the City of Philadelphia with which the Reverend Matthew Anderson is connected; and I direct my executors to make further payments to said thirteen institutions in the same proportions from time to time at their discretion until the final settlement of my estate.

*Eighth.*—All the rest, residue and remainder of my estate real and personal whatsoever and wheresoever I give devise and bequeath unto my executors hereinafter named and to the survivors and survivor of them upon the following trusts, that they will permit my two sons Frederick A. Dreer and Ferdinand J. Dreer Junior to occupy my dwelling house No. 1520 Spruce Street in the City of Philadelphia, and use all the furniture and other articles therein as long as they may desire to reside therein, it being my hope that my two sons may continue to live in said dwelling house together

so long as my son Ferdinand J. Dreer Junior shall remain single, my said son Ferdinand J. Dreer Junior paying one third and his brother Frederick A. Dreer paying two thirds of the expense of supporting the said house and of all taxes, water rents and repairs thereon; but if they or either of them shall not wish to live together in said house then in trust to sell the same for a price that may be agreed upon by my Executors and my son Ferdinand J. Dreer Junior and in trust to sell such of the contents of the said dwelling house as my two sons may not want; the articles to be taken by my said sons being hereby given to them and to be divided by agreement or by lot or in case of disagreement then my Executors omitting my son Frederick A. Dreer; and in trust as to any other real estate to let and demise the same and as to my residuary personal estate and the proceeds of said dwelling house No. 1520 Spruce Street when sold and the proceeds of the sale of such of the contents of my said dwelling house as my said sons may not want, to invest and keep invested the same and take and collect and receive the rents and profits of my said residuary real estate and the income of my said residuary personal estate and when and as received to pay to each of my said sons Frederick A. Dreer and Ferdinand J. Dreer Junior an annuity of Eight thousand Dollars during all the term of their respective natural lives which shall be increased to Ten thousand Dollars if my said dwelling house shall be sold; and without the said annuity or any part thereof being in any manner or way liable for or subject to their debts contracts or engagements and so that neither of my said sons shall assign or otherwise dispose of the same by way of charge or in the way of anticipation.

*Ninth.*—I authorize my son Ferdinand J. Dreer Junior to dispose of by his will Twenty thousand Dollars of the sum of Two hundred thousand Dollars next hereinafter mentioned and at his death I give to any widow he may leave to survive him an annuity of Five thousand Dollars for life and subject to the payment of the said annuity I give to any children or issue of deceased children he may leave to survive him the sum of Two hundred thousand Dollars unless he disposes of said sum of Twenty thousand Dollars in which case I give them the sum of One Hundred and eighty thousand Dollars.

I authorize my son Frederick A. Dreer to dispose of by his will Twenty thousand Dollars of the sum of Two hundred thousand Dollars next hereinafter mentioned and at his death I give to any widow he may leave to survive him an annuity of Five thousand Dollars for life and subject to the payment of the said annuity I give any children or issue of deceased children he may leave to survive him the sum of Two hundred thousand Dollars unless he disposes of the said sum of Twenty thousand Dollars in which case I give them the sum of One hundred and eighty thousand Dollars.

Should either or both of my said sons Ferdinand J. Dreer Junior and Frederick A. Dreer die without leaving issue then at the death of each of them so dying I give one half of the said sum of Two hundred thousand Dollars or One hundred and eighty thousand Dollars subject to the payment of the said annuity of Five thousand Dollars to such of my nephews and nieces as may then be living and the

issue of such of them as may then be deceased, and I give the other half thereof to the twenty two institutions following:

The Womens Christian Association at Eighteenth and Arch Streets.

The Philadelphia Home for Incurables at Forty eighth Street and Woodland Avenue as a memorial to my deceased daughter Abigail Matilda Dreer.

The Presbyterian Hospital in Philadelphia.

The Jewish Hospital Association of Philadelphia.

The Howard Hospital and Infirmary for Incurables of the City of Philadelphia.

The Presbyterian Orphanage in the State of Pennsylvania.

Home of Industry for Discharged Prisoners now at Seventy third and Paschall Streets.

Southern Home for Destitute Children now on South Broad Street.

The Protestant Episcopal City Mission at No. 411 Spruce Street.

The Evening Home and Library Association now on Van Pelt Street near Chestnut Street.

Childrens Aid Society now at 321 South Twelfth Street.

South Branch of the Young Mens Christian Association now at Broad and Federal Streets.

The Home Missionary Society of which William H. Lucas is Treasurer.

The Christian League of Philadelphia of which John H. Converse is Treasurer.

The Bedford Street Mission now at No. 617 Alaska Street.

Hospitals of the Womens Homeopathic Association of Pennsylvania at Twentieth Street and Susquehanna Avenue.

Rush Hospital for Consumptives now at Thirty third Street and Lancaster Avenue.

The Home Teaching for the Adult Blind and Free Circulating Library Association of which Mr. Frank Read is Treasurer.

Saint Christophers Hospital for Children on Lawrence and Huntingdon Streets.

Orphans Home and Asylum for the Aged and Infirm of the Evangelical Lutheran Church at Germantown, Philadelphia upon condition that it shall erect a bronze plate as a memorial to my father Frederick Dreer and my mother Fredericka Augusta Dreer by their son Ferdinand J. Dreer.

The American Philosophical Society.

and the Hayes Mechanics Home of which sum the last named institution shall receive three twenty fourths and each of the others one twenty fourth.

*Tenth.*—Whenever my sons shall vacate my house No. 1520 Spruce Street I give to the Hayes Mechanics Home the following twelve paintings to be placed in a picture gallery to be erected at said Home, viz.:

The City Gate by Hassenplug.

Duck Shooting by Ranney.

The Coast of Sicily by Andreas Achenbach.

Dogs on the scent by Henrietta Ronner.

A family scene in the Netherlands by Valkenburg.

A scene on the Bay of Fundy by Moran.

A nooning by Shayer.

An English Landscape by Jutson.

A Dutch prince by Vanloo.

Cattle by H. Bisbing.

Fish by Rolf.

Cattle by E. Verbeekhoven and any others which my executors together with my two sons may desire to place therein.

*Eleventh.*—Whenever my two sons shall vacate my house No. 1520 Spruce Street I give the large painting by Hasenclever entitled the Deputation of working men in the revolution in Germany in 1849 to the art gallery proposed to be erected by the Commissioners of Fairmount Park or to such other public gallery as my Executors may select, the said painting to be designated by my name as a gift.

*Twelfth.*—I direct that no advances to either of my sons appearing on my books shall be charged against them.

*Thirteenth.*—All the rest residue and remainder of my estate real and personal whatsoever and wheresoever I give to the thirteen institutions and in the proportions mentioned in the seventh item of this my will.

*Fourteenth.*—I authorize my said two children and the survivor of them as long as they be living and the surviving Executors and Trustees to fill any vacancy which may occur by the death resignation or discharge of any of my Executors and Trustees by the appointment of such person or persons or corporation as they may select to fill such vacancy and in like manner to fill all vacancies which may occur by the decease resignation or discharge of any person or persons or corporation appointed by them or him to fill any prior vacancy and so *toties quoties*, and I direct that there shall always be three Executors and Trustees unless a corporation shall be appointed.

*Fifteenth.*—I do hereby confer upon my Executors and Trustees and the survivors and survivor of them in addition to the powers hereinbefore given to them the following powers to wit

To sell all or any part of my real and personal estate and all investments and reinvestments thereof either at public or private sale whenever they may deem it for the interest of my estate upon such terms as to them may seem proper and to execute all necessary deeds conveyances and transfers for the same to the purchaser or purchasers thereof his her or their heirs, executors, administrators and assigns forever free clear and discharged from all the legacies, annuities, trusts, conditions, provisions and limitations of this my will and without any obligation on the part of the purchaser to see to or be responsible for the application of the purchase money.

To make investments and reinvestments in any real and personal estate which they may think proper.

To retain investments made by me as they may be at the time of my decease.

To dedicate Streets to public use.

It is my wish that my friends Abner G. Murphy and William Lore who have collected rents and mortgage interest for me shall continue to make collections for my Executors as long as their services are satisfactory to my Executors.

*Sixteenth.*—I direct that no inventory of my estate shall be filed in the office of the Register of Wills.

*Seventeenth.*—I nominate and appoint my friend Dundas T. Platt, my son Frederick A. Dreer, my friend S. Henry Norris Esquire and



my friend William Lore to be the Executors and Trustees under this my last will and testament and direct that no security shall be required of them, and I give to each of my said Executors immediately after letters testamentary are granted to them the sum of Three thousand Dollars in lieu of any commissions they would be entitled to on the principal of my estate, and I also give them a commission of two per cent on the income of my estate over and above the charges made by agents for collection, and I give to any individual or corporation that may hereafter be appointed Trustee the sum of Three thousand Dollars as full compensation on the principal of my estate and a commission of two per cent on the income thereof, and all the powers and authorities herein conferred on my said Executors and Trustees and the survivors and survivor of them shall in like manner and way be exercised by any substituted Executor and Trustee under the provisions of this my will in conjunction with any remaining or surviving Executors and Trustees, and I give to my son Ferdinand J. Dreer Junior the sum of Three thousand Dollars as soon as letters testamentary are granted to my Executors. In witness whereof I have hereunto set my hand and seal this Fourth day of November A. D. nineteen hundred and one. (1901).

FERD. J. DREER. [SEAL.]

Signed sealed published and declared by the said Ferdinand J. Dreer as and for his last will and testament in the presence of us who at his request, in his presence and in the presence of each other have hereunto subscribed our names as witnesses.

THOS. D. MOWLDS

SAM'L H. KIRKPATRICK.

I, Ferdinand J. Dreer hereby make this codicil to my foregoing will dated the Fourth day of November A. D. 1901.

I give unto my friend Hugh R. Moore of No. 806 Buttonwood Street in the City of Philadelphia the sum of One thousand Dollars. In witness whereof I have hereunto set my hand and seal this Twenty eighth day of February Anno Domini 1902.

FERD. J. DREER. [SEAL]

Signed sealed published and declared by the said Ferdinand J. Dreer as and for a codicil to his last will and testament in the presence of us, who at his request, in his presence and in the presence of each other have hereunto subscribed our names as witnesses.

THOS. D. MOWLDS

SAM'L H. KIRKPATRICK.

Thos. D. Mowlds and Sam'l H. Kirkpatrick the subscribing witnesses to Will (dated November 4th, 1901), and codicil thereto (dated February 28th, 1902). Sworn and affirmed June 5th, 1902.

CHAS. IRWIN,

Dep. Register.

Dundas T. Platt, Fred'k A. Dreer, S. Henry Norris and Wm. Lore the executors named in the Will qualified June 5th, 1902, and letters

testamentary granted unto them. The testator died on the twenty-fourth day of May, A. D. 1902, at 6.30 o'clock p. m.

CHAS. IRWIN,  
*Dep. Register.*

Security has been entered in the sum of five hundred thousand dollars June 5th, 1902.

Endorsed: U. S. C. C., E. D. of Penna. No. 61, October Session, 1905. Pratt et al. v. McCoach. Amendment to Plaintiffs' Statement. Filed Oct. 12, 1906. Samuel Bell, Clerk. Hunn.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA.

October Sessions, 1905. No. 61.

DUNDAS T. PRATT, FREDERICK A. DREER, S. HENRY NORRIS and  
WILLIAM LORE, Executors of the last will and testament of Fer-  
dinand J. Dreer, deceased,

vs.

WILLIAM McCOACH, Collector of Internal Revenue for the First  
Collection District of Pennsylvania.

AFFIDAVIT OF DEFENCE.

UNITED STATES OF AMERICA,  
EASTERN DISTRICT OF PENNSYLVANIA, } ss.

Before me, William W. Craig, personally appeared William McCoach, who having been duly sworn according to law, deposes and says that he is the defendant in this case and is Collector of Internal Revenue for the First Collection District of Pennsylvania, and that he has a just and true and legal defence to the whole of the plaintiffs' claim of the following nature and character, to wit:

The defendant denies that so much of the tax as was assessed upon the legacy in favor of Frederick A. Dreer in which the amount taxable was fixed at \$10,000 and the tax assessed at \$75.00 never fell due and that no tax was properly assessable thereon, but is advised and therefore avers that the tax upon the said legacy was lawfully and properly assessed under the laws of the United States and was justly and lawfully payable by the plaintiffs to the said defendant.

And the defendant denies that so much of the tax as was assessed upon the legacy in favor of Ferdinand J. Dreer, Jr., in which the amount taxable was fixed at \$10,000 and the tax assessed at \$112.50 never fell due and no tax is properly assessable thereon, but is advised and therefore avers that the tax upon the said legacy was lawfully and properly assessed under the laws of the United States and was justly and lawfully payable by the plaintiffs to the said defendant.

And the defendant denies that so much of the tax as was assessed upon the legacy in favor of Edwin Greble Dreer, in which the amount taxable was fixed at \$5000 and the tax assessed at \$56.25 never fell



due and that no tax was properly assessable thereon, but is advised and therefore avers that the tax upon the said legacy was lawfully and properly assessed under the laws of the United States and was justly and lawfully payable by the plaintiffs to the said defendant.

And the defendant denies that so much of the tax as was assessed upon the legacy in the shape of an annuity of \$2500 payable to Edwin Greble Dreer in which the amount taxable was fixed at \$38,293.05 and the tax assessed at \$430.82 never fell due and that no tax was properly assessable thereon, but is advised and therefore avers that the tax upon the said legacy was lawfully and properly assessed under the laws of the United States and was justly and lawfully payable by the plaintiffs to the said defendant.

And the defendant denies that so much of the tax as was assessed upon the legacy in favor of Abigail D. Dreer in which the amount taxable was fixed at \$5000 and the tax assessed at \$56.25 never fell due and that no tax was properly assessable thereon, but is advised and therefore avers that the tax upon the said legacy was lawfully and properly assessed under the laws of the United States and was justly and lawfully payable by the plaintiffs to the said defendant.

And the defendant denies that so much of the tax as was assessed upon the legacy in the shape of an annuity of \$2000 payable to Abigail D. Dreer in which the amount taxable was fixed at \$33,753.52 and the tax assessed at \$379.73 never fell due and no tax was properly assessable thereon, but is advised and therefore avers that the tax upon the said legacy was lawfully and properly assessed under the laws of the United States and was justly and lawfully payable by the plaintiffs to the said defendant.

And the defendant denies that so much of the tax as was assessed upon the residuary legacy in the shape of an annuity of \$8000 payable to Frederick A. Dreer in which the amount taxable was fixed at \$10,975.68 and the tax assessed at \$82.32 never fell due and no tax is properly assessable thereon, but is advised and therefore avers that the tax upon the said legacy was lawfully and properly assessed under the laws of the United States and was justly and lawfully payable by the plaintiffs to the said defendant.

And the defendant denies that so much of the tax as was assessed upon the residuary legacy in the shape of an annuity of \$8000 payable to Ferdinand J. Dreer, Jr., in which the amount taxable was fixed at \$15,264.82 and the tax assessed at \$171.73 never fell due and no tax was properly assessable thereon, but is advised and therefore avers that the tax upon the said legacy was lawfully and properly assessed under the laws of the United States and was justly and lawfully payable by the plaintiffs to the said defendant.

As to so much of plaintiffs' claim as makes demand for the payment of the sums of \$292.28 and \$35.87, being a total of \$328.15, with interest thereon from July 13, 1903, being the amount of tax assessed upon the contingent interests or legacies payable to Edwin Greble Dreer and Ferdinand J. Dreer, Jr., the amount of said interest or legacy payable to the said Edwin Greble Dreer being valued, for the purpose of taxation, at \$25,980.68, and a tax assessed thereon of \$292.28, and the amount of interest or legacy payable to the said Ferdinand J. Dreer, Jr., being assessed for the purpose of taxation at \$3,189, and a tax assessed thereon of \$35.87, the defendant avers that in due course of law, following the payment by the

plaintiff of the said amount of \$328.15, as therein averred, a petition for refund of the said amount was regularly filed by the executors of the said estate in the office of the Commissioner of Internal Revenue, under the provisions of the Acts of Congress thereto pertaining and the regulations lawfully made thereunder and that in pursuance of said petition, and on October 28, 1905, an adjudication was duly made by the said Commissioner, allowing to the plaintiffs the said amount of refund, to wit: \$328.15, and that thereupon, under audit No. 38,599, a warrant was duly issued and tendered to the said plaintiffs, but which said warrant for the said amount of \$328.15, the said plaintiffs refused and declined to accept. And now, to wit: the defendant hereby renews his said tender of payment to the said plaintiffs of the said amount of \$328.15, and makes this his defence to the plaintiffs' statement of claim as to said amount, and to the claim for the payment of interest thereon. All of which the defendant expects to be able to prove upon the trial of this case.

W. McCOACH.

Sworn to and subscribed before me this 15th day of July, 1907.

W. W. CRAIG,

United States Commissioner, Eastern District of Penna., Phila.  
(Seal)

Endorsed: U. S. C. C., E. D. of Penna. No. 61, October Session, 1905. Dundas T. Pratt, Frederick A. Dreer, S. Henry Norris and William Lore, Executors of the last Will and Testament of Ferdinand J. Dreer, Deceased v. William McCoach, Collector of Internal Revenue for the First Collection District of Pennsylvania. Affidavit of Defence. Filed July 15, 1907. Henry B. Robb, Clerk. Jasper Yeates Brinton, Asst. U. S. Atty., J. Whitaker Thompson, United States Attorney.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA.

October Session, 1905.

No. 61.

PRATT et al.,

vs.

McCOACH, etc.

The defendant in the above entitled cause pleads non-assumpsit.

J. W. THOMPSON,  
United States Attorney,  
Atty. for deft.

To the Clerk, U. S. Circuit Court, E. D. of Pa.

Endorsed: U. S. C. C., E. D. of Penna. No. 61, October Session, 1905. Pratt et al., v. McCoach, etc. Plea. Filed Oct. 15, 1907. Henry B. Robb, Clerk, By L., Deputy Clerk. J. W. Thompson, U. S. Atty.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA.

October Session, 1905. No. 61.

PRATT et al.,

vs.

McCOACH, etc.

Enter rule on Defendant to plead in fifteen days, or judgment  
*sec reg.*

E. HUNN,  
For Plff.  
10-8-1907.

To Clerk, U. S. C. C.

Endorsed: U. S. C. C., E. D. of Penna. No. 61, October Session, 1905. Pratt et al., v. McCoach, etc. Rule on Defendant to Plead, &c. Filed Oct. 16-1907. Henry B. Robb, Clerk, By L., Deputy Clerk. E. Hunn.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA.

October Session, 1905. No. 61.

PRATT et al.,

vs.

McCOACH, etc.

The Clerk of the above Court will please place the above case on the Trial List.

E. HUNN,  
For Plaintiff.

To the Clerk of the U. S. Circuit Court.

Endorsed: U. S. C. C., E. D. of Penna. No. 61, October Session, 1905. Pratt et al., v. McCoach, etc. Order to place above cause on Trial List. Filed Nov. 19-1907. Henry B. Robb, Clerk, By L., Deputy Clerk. Hunn.

U. S. C. C.

October Session, 1905. No. 61.

PRATT et al.,

vs.

McCOACH, etc.

The death of Dundas T. Pratt and William Lore, Executors, two of the Plaintiffs in the above cause, is suggested.

E. HUNN,  
For Plffs.  
5-22-1908.

To Clerk, U. S. C. C.

Endorsed: U. S. C. C., E. D. of Penna. No. 61, October Session, 1905. Pratt et al., v. McCoach, etc. Suggestion of death of certain plaintiffs. Filed May 23, 1908. Henry B. Robb, Clerk, By L., Deputy Clerk. Hunn.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA.

October Session, 1905.

No. 61.

PRATT et al.,

vs.

McCOACH, etc.

Enter rule on defendant for Judgment for Plaintiff in above cause for want of a sufficient affidavit of defense for \$2172.36, with interest from September 2, 1903.

E. HUNN,  
For Plff.  
5-22-1908.

To Clerk, U. S. C. C.

Endorsed: U. S. C. C., E. D. of Penna. No. 61, October Session, 1905. Pratt et al., v. McCoach, etc. Rule for Judgment for Want of Sufficient Affidavit of Defense. Jasper Yeates Brinton, Esq., Asst. U. S. Atty. J. Whitaker Thompson, Esq., U. S. Atty. Gentlemen: Please notice within rule this day entered in above case. Yours truly, E. Hunn, for Plff. 5-22-1908. Hunn. Filed May 23-1908. Henry B. Robb, Clerk, By L., Deputy Clerk.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA.

October Session, 1905.

No. 61.

PRATT et al.,

vs.

McCOACH, etc.

Before McPHERSON, J.

And now, this 29th day of May, 1908, the Court orders and decrees that judgment be entered in favor of the plaintiff and against the defendant for the sum of \$1795.15.

BY THE COURT.

Attest:

GEORGE BRODBECK,  
Deputy Clerk.

Endorsed: U. S. C. C., E. D. of Penna. No. 61, October Session, 1905. Pratt et al., v. McCoach, etc. Order of Court directing judgment. Filed May 29, 1908. Henry B. Robb, Clerk, L. Hunn.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA.

October Session, 1905.

No. 61.

DUNDAS T. PRATT et al.,

vs.

WILLIAM McCOACH, Collector of Internal Revenue.

To the Clerk of the C. C. U. S., E. D. of Penna.

Enter judgment in behalf of Plaintiff and against the Defendant in the sum of One Thousand Seven Hundred Ninety-Five and 15-100 Dollars (\$1795.15) in accordance with the Order of Court of May 29, 1908.

E. HUNN,

Attorney for Plaintiff.

Endorsed: U. S. C. C., E. D. of Penna. No. 61, October Session, 1905. Pratt et al., v. McCoach, Collector. Praecipe for Judgment. Filed December 16, 1908. Henry B. Robb, Clerk, By L., Deputy Clerk.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA.

October Session, 1905.

No. 61.

DUNDAS T. PRATT et al.,

vs.

WILLIAM McCOACH, Collector of Internal Revenue.

ASSIGNMENT OF ERROR.

And now comes William McCoach, the above-named defendant, and assigns the following error to the judgment and decree of the learned Court, entered the 29th day of May, A. D. 1908, to wit:

The learned Court erred in directing that judgment be entered on Plaintiff's Statement of Claim in favor of said plaintiff in the sum of seventeen hundred and ninety-five dollars and fifteen cents (\$1795.15), for the reason that the said sum represented taxes in the amount of thirteen hundred and sixty-four dollars and sixty cents (\$1364.60) with interest thereon in the amount of four hundred and thirty dollars and fifty-five cents (\$430.55), which said taxes had been lawfully assessed and collected by the defendants from the plaintiff in the above-entitled case, and had been lawfully imposed by Section 29 of the Act of Congress approved the 13th day of June, A. D. 1908, entitled "An Act to provide Ways and Means to Meet War Expenditures" (30th St. p. 448) and amendments thereto, prior to the taking effect of the Act of Congress approved the 12th day of April, A. D. 1902 (32nd St., part 1, p. 96), and were lawfully assessed and collected by the defendant from the plaintiff under the

provisions of Section 8 of the said Act of Congress approved the 12th day of April, A. D. 1902.

J. WHITAKER THOMPSON,  
United States Attorney,  
Attorney for Defendant.

Endorsed: U. S. C. C., E. D. of Penna. No. 61, October Session, 1905. Dundas T. Pratt et al., v. William McCoach, Collector of Internal Revenue. Assignment of Error. Filed Dec. 17, 1908. Henry B. Robb, Clerk, By L., Deputy Clerk. J. W. Thompson, U. S. Atty., Atty. for Defendant.

# UNITED STATES CIRCUIT COURT.

October Session, 1905.

No. 61.

DUNDAS T. PRATT et al.,

vs.

WILLIAM MCCOACH, Collector of Internal Revenue.

## PETITION FOR WRIT OF ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS.

To the Honorable the Judge of the Circuit Court of the United States for the Eastern District of Pennsylvania.

The petition of William McCoach, Collector of Internal Revenue for the First District of Pennsylvania, respectfully represents:

That there was filed, on the twenty-ninth day of May, A. D. 1908, in the above proceedings, a judgment and decree of said Court entering judgment on the Plaintiff's Statement of Claim in favor of the plaintiff for the amount of the tax and interest thereon.

Whereby your petitioner was aggrieved and hereby files his assignment of error, setting forth the error which your petitioner assigns in said petition.

Wherefore your petitioner prays for a writ of error to the United States Circuit Court of Appeals for the Third Circuit, under and according to the laws of the United States in that behalf made and provided, and also that further proceedings in the said Circuit Court shall be suspended and stayed until the determination of said writ of error by the said United States Circuit Court of Appeals, and that a transcript of the record and proceedings and papers upon which such final judgment was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals.

And your petitioner will ever pray, etc.

J. WHITAKER THOMPSON,  
United States Attorney.

Before McPHERSON, J.

The foregoing petition is granted and the appeal allowed.

BY THE COURT.

Attest:

GEORGE BRODBECK,  
Deputy Clerk.

Dec. 17-1908.

Endorsed: U. S. C. C., E. D. of Penna. No. 61, October Session, 1905. Dundas T. Pratt et al., v. William McCoach, Collector of Internal Revenue. Petition for Writ of Error and allowance of same. Filed Dec. 17-1908. Henry B. Robb, Clerk, By L., Deputy Clerk. J. W. Thompson, U. S. Atty., Atty. for Petitioner.

UNITED STATES OF AMERICA,  
EASTERN DISTRICT OF PENNSYLVANIA, } *scd.*

I, HENRY B. ROBB, Clerk of the Circuit Court of the United States of America for the Eastern District of Pennsylvania, in the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Pleas and proceedings in the case of Pratt et al., v. William McCoach, Collector, etc., No. 61, October Session, 1905, on file and now remaining among the records of the said Court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said Court at Philadelphia, this 23rd day of December, in the year of our Lord one thousand nine hundred and eight, and of the Independence of the United States the one hundred and thirty-third.

HENRY B. ROBB,  
Clerk of C. C.

By GEORGE BRODBECK,  
Deputy Clerk.

(Seal)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,  
FOR THE THIRD CIRCUIT.

No. 1194.

October Term, 1912.

WILLIAM McCOACH, COLLECTOR, *Plaintiff in Error.*

*vs.*

DUNDAS F. PRATT, ET AL., *Defendants in Error.*

And afterwards, to wit, on the Fourth day of December, 1912, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Hon. George Gray and Hon. Joseph Buffington, Circuit Judges, and the Hon. John Reilstab, District Judge, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the twenty-first day of January, 1913, come the parties aforesaid by their counsel aforesaid, and the Court now being fully advised in the premises, renders the following decision:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,  
FOR THE THIRD CIRCUIT.

October Term, 1912. No. 86.

WILLIAM McCOACH, COLLECTOR OF INTERNAL REVENUE FOR THE  
FIRST COLLECTION DISTRICT OF PENNSYLVANIA,  
*Plaintiff in Error.*

*vs.*

DUNDAS F. PRATT, FREDERICK A. DREER, S. HENRY NORRIS, AND  
WILLIAM LORE, EXECUTORS OF THE LAST WILL AND TESTAMENT  
OF FERDINAND J. DREER, DECEASED,

*Defendants in Error.*

In Error to the Circuit Court of the United States for the Eastern  
District of Pennsylvania.

Before GRAY and BUFFINGTON, Circuit Judges, and REILSTAB, Dis-  
trict Judge.

PER CURIAM:

In the court below, the defendants in error, as executors of the last will and testament of Ferdinand J. Dreer, deceased, brought their action against the plaintiff in error, as Collector of Internal Revenue for the First District of Pennsylvania, to recover certain taxes claimed under sections 29 and 30 of the so-called "War Revenue Act" of June 13, 1898, chapter 448, and paid to the plaintiff in



error, collector as aforesaid, under protest. The learned counsel for the government, in the opening paragraph of his brief, says: "The government frankly concedes that on its facts, the present case falls within the decision of this court in the case of *Disston vs. McClain*, 147 Fed. Rep. 114 (1906)," and the court below, in rendering judgment for the plaintiffs for want of sufficient affidavit of defense, makes the same statement.

It is contended, however, by counsel for the government, that the opinion of the Supreme Court of the United States in the recent case of *United States vs. Fidelity Trust Company*, 222 U. S. 158, rendered since the decision above referred to, "invites a reconsideration and modification of the views heretofore expressed by this court in respect to the single point now in controversy."

The suit in the case just referred to was brought to recover a portion of a succession tax paid under the act of June 13, 1898, Chap. 448, 30 Stat. 448, 464, the action being based on the act of June 27, 1902, Chap. 1160, which provides for refunding "so much of said tax as may have been collected on contingent beneficial interests which shall not have become vested prior to July 1, 1902." The question before the court was, whether a legacy to pay over net income to the legatee in periodical payments during the legatee's life, on which the legatee had received several payments of income, was or was not a contingent beneficial interest, or a vested life estate, within the meaning of the Refunding Act.

In the case of *Disston vs. McClain* (supra), as in the present case, this court was concerned with what was to be considered a "legacy" or "distributive share" under sections 29 and 30 of the War Revenue Act of June 30, 1898, and not with the interpretation of "contingent beneficial interests which shall not have become vested prior" to a certain date, as in the case lately before the Supreme Court. The *Disston* case was the subject of a petition by the government to the Supreme Court for a writ of certiorari, which petition was refused. Though the questions in the two cases are not unrelated, a careful reading of the opinion of the Supreme Court does not convince us that they are identical, either in form or substance. We do not feel called upon, therefore, to reconsider or modify the opinion expressed by us in *Disston vs. McClain*, and in conformity with our opinion in that case we affirm the judgment of the court below.

---

## IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

No. 1194 (List No. 86)

October Term, 1912

WILLIAM McCOACH, COLLECTOR, *Plaintiff in Error*,

*vs.*

DUNDAS F. PRATT, ET AL., *Defendants in Error*.

In Error to the Circuit Court of the United States, for the Eastern District of Pennsylvania.

This cause came on to be heard on the transcript of record from the Circuit Court of the United States, for the Eastern District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said Circuit Court in this cause be, and the same is hereby affirmed.

JOHN B. MCPHERSON,  
*Circuit Judge.*

Philadelphia, January 21, 1913.

Endorsed: No. 1194. Order affirming judgment. Received and Filed January 21, 1913. Saunders Lewis, Jr., Clerk.

UNITED STATES OF AMERICA,  
*Eastern District of Pennsylvania* } *et.*  
*Third Judicial Circuit.*

I, Saunders Lewis, Jr., Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby Certify the foregoing to be a true and faithful copy of the original transcript of record and proceedings in this Court, in the case of William McCoach, Collector, Plaintiff in Error, and Dundas F. Pratt, et al., Defendants in Error, No. 1194, October Term, 1912, on file and now remaining among the records of the said Court, in my office.

In Testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this twentieth day of March, in the year of our Lord one thousand nine hundred and thirteen, and of the Independence of the United States the one hundred and thirty-seventh.

[SEAL.]

SAUNDERS LEWIS, Jr  
*Clerk of the U. S. Circuit Court of  
Appeals, Third Circuit.*

○

46 UNITED STATES OF AMERICA, ss.:

The President of the United States of America to the honorable the judges of the United States Circuit Court of Appeals for the Third Circuit,

Greeting:

Being informed that there is now pending before you a suit in which William McCoach, collector of internal revenue for the first collection district of Pennsylvania, is plaintiff in error, and Dundas F. Pratt, Frederick A. Dreer, S. Henry Norris, and William Lore, executors of the last will and testament of Ferdinand J. Dreer, deceased, are defendants in error, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the Circuit Court of the United States for the Eastern District of Pennsylvania, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme  
47 Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the honorable Edward D. White, Chief Justice of the United States, the 3d day of May, in the year of our Lord one thousand nine hundred and thirteen.

[SEAL.]

JAMES H. MCKENNEY,

*Clerk of the Supreme Court of the United States.*

48 (Indorsed:) File No. 23641. Supreme Court of the United States, No. 1066, October term, 1912. William McCoach, collector of internal revenue, etc., vs. Dundas F. Pratt et al., executors, etc. Writ of certiorari.

49 In the Supreme Court of the United States, October term, 1912.

WILLIAM MCCOACH, COLLECTOR OF INTERNAL

Revenue, petitioner,

v.

DUNDAS F. PRATT ET AL.

No. 1066.

*Stipulation as to return to writ of certiorari.*

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the record now on file in the Supreme Court of the United States shall constitute the return of the clerk of the Circuit Court of Appeals for the Third Circuit to the writ of certiorari granted herein.

JAMES C. McREYNOLDS, JR.,

*Attorney-General.*

E. HUNN,

*Counsel for Respondent.*

MAY 5, 1913.

50 UNITED STATES OF AMERICA, EASTERN DISTRICT OF PENNSYLVANIA, THIRD JUDICIAL CIRCUIT, *act.*:

I, Saunders Lewis, jr., clerk of the United States Circuit Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original stipulation as to return to writ of certiorari, in the case of William McCoach, collector of internal revenue, petitioner, vs. Dundas F. Pratt et al., 1194, on file, and now remaining among the records of the said court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this fourteenth day of May, in the year of our Lord one thousand nine hundred and thirteen, and of the independence of the United States the one hundred and thirty-seventh.

[SEAL.]

SAUNDERS LEWIS, Jr.,

*Clerk of the U. S. Circuit Court of Appeals, Third Circuit.*

(Indorsement on cover:) File No. 23641. Supreme Court U. S. October term, 1912. Term No. 1066. William McCoach, collector of internal revenue, etc., petitioner, vs. Dundas F. Pratt et al., executors, etc. Writ of certiorari and return. Filed May 16, 1913.

○



# In the Supreme Court of the United States.

OCTOBER TERM, 1912.

WILLIAM McCOACH, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST COLLECTION DISTRICT OF PENNSYLVANIA,  
PETITIONER,

*v.*

DUNDAS F. PRATT, FREDERICK A. DREER  
S. HENRY NORRIS, AND WILLIAM LORE,  
EXECUTORS OF THE LAST WILL AND  
TESTAMENT OF FERDINAND J. DREER  
DECEASED.

No. —.

**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, AND BRIEF THEREON.**

*To the Chief Justice and Associate Justices of the Supreme Court of the United States:*

The Attorney General, on behalf of William McCoach, collector of internal revenue for the first collection district of Pennsylvania, prays for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Third Circuit in the above-entitled cause.

**QUESTION PRESENTED.**

The case presents the question whether the bequest of an annuity for life was taxable as an entity, according to its clear value, under the provisions of sections 29 and 30 of the War Revenue Act of June 13, 1898 (30 Stat., 448, 464), as amended by section 10 of the act of March 2, 1901 (31 Stat., 938, 946), or whether only the particular payments already due were so taxable.

The Circuit Court of Appeals, following a previous decision of its own (*Disston v. McClain*, 147 Fed. Rep., 114), took the latter view. (201 Fed. Rep., 1021.)

**REASONS FOR THE ALLOWANCE OF THE WRIT.**

1. The decision of the Circuit Court of Appeals for the Third Circuit in this case is in conflict with the decision of the Circuit Court of Appeals for the Second Circuit in *Peck v. Kinney* (143 Fed., 76).

2. It is contrary to the established practice of the Treasury Department in executing the provisions of sections 29 and 30 of the War Revenue Act of 1898.

3. It is contrary to the decision of this court in *United States v. Fidelity Trust Company* (222 U. S., 158).

It is most important that rulings on matters of taxation should be uniform, otherwise the liability of the taxpayer will depend entirely upon the jurisdiction in which such liability is asserted.

4. It is contrary to the decisions of the Pennsylvania courts (in which State the testator in this case



was domiciled and this controversy arose) in interpreting the inheritance-tax law of that State.

For which reasons (hereafter elaborated), it is submitted, a writ of certiorari should issue.

#### BRIEF IN SUPPORT OF THE PETITION.

Section 29 of the act of June 13, 1898, as amended, provides, in so far as material to this case, as follows:

SEC. 29. That any person or persons having in charge or trust, as administrators, executors, or trustees, any legacies or distributive shares arising from personal property, where the whole amount of such personal property as aforesaid shall exceed the sum of ten thousand dollars in actual value, passing, after the passage of this Act, from any person possessed of such property, either by will or by the intestate laws of any State or Territory,  
\* \* \* to any person or persons, or to any body or bodies, politic or corporate, in trust or otherwise, shall be, and hereby are, made subject to a duty or tax, to be paid to the United States, as follows—that is to say: \* \* \*

It then fixes the rate of taxation according to the value of the said personal property and according to the relationship of the beneficiary to the benefactor.

Section 30 requires the executor, etc., to pay the tax assessed upon "such legacy or distributive share," and also to furnish a schedule which shall contain the name of each person entitled to any beneficial interest in the estate, "together with the *clear value* of such interest."

The testator herein died on May 24, 1902, domiciled at Philadelphia, Pa. (R., 6), where his will was proved (R., 19). Said will gave annuities, of slightly different character, but all for the respective lives of the annuitants, to his sons (R., 25), grandson, and granddaughter (R., 22, 23), and other relatives (R., 21).

The petitioner, as collector of internal revenue for the first collection district of Pennsylvania, assessed the respondents, as executors of the will of said decedent, in the amount of \$1,692.75, as a legacy tax upon said annuities, and said executors paid the same under protest (R., 8, 10). Subsequently, the executors filed a claim with the Commissioner of Internal Revenue for a refund of the said payment, which was refused (R., 11), and thereupon said executors brought this suit against this petitioner, as collector as aforesaid, to recover the amount of said payment with interest (R., 6-9). The Circuit Court of the United States for the Eastern District of Pennsylvania sustained the claim of the plaintiffs, and entered judgment in their favor for \$1,795.15 (R., 36), and this judgment was affirmed by the Circuit Court of Appeals.

1. In *Peck v. Kinney* (143 Fed., 76), decided by the Circuit Court of Appeals for the Second Circuit, it was conceded, and so held, that the bequest of an annuity was taxable under the War Revenue Act as an entity, according to its present value.

2. The "regulations and instructions" issued by the internal-revenue department under authority of

section 30 of the act of June 13, 1898, specifically provided for the valuation and taxation of annuities as an entirety at their present value, and this departmental construction was always adhered to during the life of the act. A sample of these regulations and instructions will be found in 143 Fed. Rep., 79.

3. There is no distinction, in so far as a legacy tax is concerned, between a present bequest of an annuity and a present bequest of the income of personal property, and therefore the decision of the Circuit Court of Appeals in the present case entirely disregards the decision of this court in *United States v. Fidelity Trust Company, supra*.

(a) An annuity was, in the early law, an incorporeal thing, of which seisin might be taken (Pollock and Maitland History of English Law, vol. 2, p. 132). It could be limited to a man and his heirs, and arrears were sued for by a special writ having an analogy to a real action (Lumley on Annuities, p. 392). In every way it was then, and has been ever since, on a higher plane of reality and definiteness than any other interest of that character, especially when charged upon, or payable out of, the corpus or income of real or personal property.

(b) An annuity is assignable, may be seized by creditors, and passes to an assignee in bankruptcy. (Lumley on Annuities, p. 29.) The same ruling has been made in this country in *In re Burtis*, 26 Am. B. R., 680, 683, where the court said:

In the present instance the trustee has the right to sell the property which the bankrupt had capable of transfer and not exempt from

levy upon the day of filing her petition, and a part of that property would be the present value, as of that date, of the future rights to the annuity or fixed payment which she had contracted for.

Even if an annuity be given free from anticipation or from the debts of the annuitant, without any limitation over, it will go to the assignee in bankruptcy (Lumley on Annuities, pp. 30-33). In *Cobb v. Overman*, 109 Fed., 65, an annuity was held provable against a bankrupt's estate. In *Dunbar v. Dunbar*, 190 U. S., 340, 351, this case is referred to without disapproval, and, on page 345, this court said:

A simple annuity which is to terminate upon the death of a particular person may be valued by reference to the mortality tables.

*Riggin v. Magwire* (15 Wall., 549, 552), is also cited, where Mr. Justice Bradley said:

It [the claim in proof] did not come within the category of annuities and debts payable in future, which are absolute existing claims. If it had come within that category, the value of the wife's probability of survivorship after the death of her husband might have been calculated on the principles of life annuities.

This latter case, however, arose under the bankrupt act of 1841, which expressly included annuitants.

(c) Where a sum is bequeathed to purchase an annuity, the annuitant is entitled to the sum itself, and, if he die before the annuity is purchased, his personal representative is entitled (*Yates v. Compton*,

2 P. Wms., Ch. Rep. 308). Where a testator left his residuary estate in trust to purchase a Government annuity of the clear annual value of four hundred pounds for the life of his wife, the representative of the wife was held entitled to the gross sum, though the wife died before the will was probated, the Court of Appeal saying (*In re Robbins*, 1907, 2 L. R., Ch. Div. 8, 12):

On principle it is difficult to see how any distinction can fairly be drawn between a gift of a definite sum to purchase an annuity and a gift of so much money as is requisite to purchase a definite annuity. "*Id certum est quod certum reddi potest.*"

(d) The term "legacy" includes an annuity, unless the will clearly indicates a contrary intention. (*Bromley v. Wright*, 7 Hare, 334, 340; *Gaskin v. Rogers*, L. R. 2 Eq., 284, 291.)

(e) The Circuit Court of Appeals, in its opinion in *Disston v. McClain* (147 Fed., 114), which was followed in the present case, distinguished between an annuity and an equitable life interest in personalty on the ground that in the case of an annuity there is no definite principal sum, but only a definite income, while in the case of the life interest there is a definite principal sum but no definite income. An annuity granted by will, however, is always payable, like any legacy, out of the personal estate of the testator, and is generally, in addition, expressly charged upon some specific personal or real estate. The difference between an

annuity and an equitable life interest in personalty is in favor of the annuity, whose capitalization can be more easily effected than that of the life estate, subject, as the latter is, to shifting charges of taxes, expenses, etc. As the Court of Appeal said in *In re Robbins*, *supra*, "*id certum est quod certum reddi potest.*" An annuity is, like any legacy, payable out of the whole personal estate and abates proportionately with the legacies, in which case the value of the annuity is taken as the basis of abatement. (*Wright v. Callender*, 2 De G. M. & G., 652, 656, 657.) It is generally a charge on the residuary estate, and an annuitant is entitled to security out of the residuary estate to the amount of the full value of his annuity. (*In re Parry*, L. R. 42 Ch. Div., 570; *Harbin v. Masterman* (1896), L. R. 1 Ch. Div., 351.) Evidently the annuitant has a claim against the estate which does not differ at all in certainty from that of the owner of the life interest, and where the life income is payable from residue, as in *United States v. Fidelity Trust Company*, *supra*, the life interest is, as a rule, subject to securing the clear value of the annuity.

The will in the present case clearly makes the various annuities a charge upon the personal estate. As to the annuities given in the second item of the will, the testator directs "that all of the above bequests be paid in cash or securities at the option of my executors" (R., 21). In the case of the annuities given to the grandson (R., 22), granddaughter (R., 23), and sons (R., 25), after devising the annui-

ties, the testator bequeaths in each case a principal sum to the children, and issue of deceased children, of the annuitant, and the annuity in each case, except that of the grandson, is 4 per cent annually of this principal sum, and in the case of the grandson it lacks only \$50 annually of being this sum. Therefore, in the case of the will here in question, not only are the annuities, at their principal value, a claim against the whole personal estate of the testator, but a special fund is set apart for their satisfaction.

The early law, as seen above, regarded an annuity, not as a contract, but as the grant of a right issuing out of certain land or certain funds. This view is evidently still true of the grant of an annuity by will. The right so granted is not merely the right to certain payments as they accrue, but is the right to such payments *for a certain period*, namely, for years, for life, or perpetually. The period for which the right is granted can not be omitted in considering the nature of the thing granted.

If an annuity be granted to A in perpetuum, and A devise this annuity to B for life, could it be claimed that B simply got a right to certain payments as they accrued? Thus most English Government securities are annuities, since there is no promise to pay any principal sum. (*Dexter v. Phillips*, 121 Mass., 178, 180, 181.) Would not a bequest of English consols to A for life be a legacy taxable at its full value under the war revenue act? But if the devise of an already existing annuity be taxable in this way, why is not



the *creation* of an annuity by devise taxable in the same way?

4. As indicated above, the testator was domiciled in Pennsylvania at the time of his death and this controversy arose there.

The courts of that State have expressly held that an annuity is taxable under the inheritance-tax law of that State. (*Thomson's Estate*, 5 Weekly Notes of Cases, 14, 19; *Bispham's Estate*, 24 *ibid.*, 79, 80.) In the former case the court said:

An annuity is as much an "estate" in the view of the law as a devise, legacy, or distributive share passing to a collateral heir or stranger in blood to the decedent, and equally subject to the tax.

In *Flickwir's Estate*, 136 Pa., 374, 481, the Supreme Court of Pennsylvania, speaking of the date when interest runs on legacies, said:

There is no substantial difference in legal aspect between the gift of an annuity for life, and of the interest or income of a fund for life; nor between the gift simply of interest, and of interest payable annually. Interest accrues *de die in diem*, but it is calculated at a rate per annum.

And they repeated this language in *Ritter's Estate*, 148 Pa., 577.

It is respectfully submitted, therefore, that a writ of certiorari should issue as prayed.

JAMES C. McREYNOLDS,  
*Attorney General.*

WILLIAM R. HARR,  
*Assistant Attorney General.*

THE UNIVERSITY OF  
CHICAGO  
LIBRARY  
1000 S. EAST ASIAN  
BUILDING

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO  
LIBRARY  
1000 S. EAST ASIAN  
BUILDING

THE UNIVERSITY OF CHICAGO  
LIBRARY  
1000 S. EAST ASIAN  
BUILDING

THE UNIVERSITY OF CHICAGO  
LIBRARY  
1000 S. EAST ASIAN  
BUILDING

THE UNIVERSITY OF CHICAGO  
LIBRARY  
1000 S. EAST ASIAN  
BUILDING

THE UNIVERSITY OF CHICAGO  
LIBRARY  
1000 S. EAST ASIAN  
BUILDING

THE UNIVERSITY OF CHICAGO  
LIBRARY  
1000 S. EAST ASIAN  
BUILDING

# INDEX.

	Page.
<b>STATEMENT</b> .....	1-6
Nature of action. Procedure .....	1
<b>STATUTES</b> .....	2-3
Act of June 13, 1898, 30 Stat., 464 .....	2
Act of March 2, 1901, 31 Stat., 947 .....	2
Act of April 12, 1902, 32 Stat., 97 .....	3
Act of June 27, 1902, 32 Stat., 406 .....	3
<b>FACTS</b> .....	3-6
Provisions of Dreer will .....	3-4
Schedule and taxing proceedings .....	4-5
Payment, protest, and refund claim .....	5-6
Admissions of pleading .....	6
<b>QUESTIONS</b> .....	6
<b>ARGUMENT</b> .....	7-26
I. DIRECT REQUESTS.....	7
II. ANNUITIES TO GRANDCHILDREN.....	7-23
1. They are taxable under section 29, act 1898 .....	7-18
a. Facts admitted by schedule and protest .....	7-8
b. Annuity, a single entire right.....	8-9
Collector took <i>whole</i> value as declared by executors .....	8
Whole value proper .....	8-9
Mortuary table estimate proper.....	9
c. Each is a taxable "legacy or distributive share" .....	9-15
Legacy includes annuity.....	9
No legal difference between it and "life estate in income" .....	10
History and nature of annuity .....	10-11
Vested and contingent estates .....	11-13
Difference and presumption .....	11-13
However "called" <i>taxable</i> because not conditional .....	13-15
Rule of this court .....	13-15
<i>U. S. v. Fidelity Tr. Co.</i> , 222 U. S., 159 .....	13
<i>Vanderbilt v. Eidman</i> , 196 U. S., 490 .....	13-15

**ARGUMENT—Continued.**

	Page.
Characteristics of these annuities . . .	15
Payment not deferred here . . .	15
Deferred payment immaterial . . .	15
Analysis of Fidelity Trust Co. case . .	16-17
Application to these annuities . . .	17-18
<b>2. Tax was here "imposed" before July 1, 1902 . . .</b>	<b>18-22</b>
Claim of executors under repealing act of April 12, 1902 . . .	18
This ground of judgment in trial court . .	18
Doctrine repudiated by this court . . .	19
<i>Hertz v. Woodman</i> , 218 U. S., 205 . . .	19-20
Change of front in C. C. A. . . .	20
C. C. A. followed own previous decision in Disston case (147 Fed., 114) that not vested . . .	20
It wrongly distinguishes Fidelity Trust case . . .	20-21
Latter repudiates Disston case doctrine .	21
Analysis of Disston case . . .	21-22
<b>3. These annuities were not affected by act of June 27, 1902 . . .</b>	<b>22-23</b>
Because not "contingent," definition of word . . .	22-23
<b>III. RESIDUARY TRUST LIFE INCOMES TO SONS. . .</b>	<b>23-26</b>
These not strictly annuities but life income estates . . .	23
Compared with those in Vanderbilt and Fidelity Trust cases . . .	24
Right, here always unconditional . . .	24
Actual possession not pre-requisite to taxability .	24
Determination of "residue" not pre-requisite to taxability . . .	25
Delivery to trustees wholly unnecessary . . .	25-26
Law would make delivery if necessary . . .	25
Title to all personalty vests in executors upon probate . . .	24
Each right, in executors and in beneficiaries alike, vested at testator's death . . .	25
Not within operation of either act of 1902 . .	26
<b>CONCLUSION . . .</b>	<b>26</b>

## AUTHORITIES CITED.

	Page.
<i>Aubin v. Daly</i> , 4 B. & Ald., 59 .....	10
<i>Bispham's Estate</i> , 24 Weekly Notes cases, 79 .....	9
<i>Boutwell's Dir. &amp; Exc. Tax System of U. S.</i> , p. 203 .....	9
<i>Bromley v. Wright</i> , 7 Hare, 334 .....	9
<i>Bur v. Extr.</i> , v. <i>Burd</i> , <i>Admr.</i> , 40 Pa. St., 182 .....	16
<i>Cobb v. Overman</i> , 109 Fed., 65 .....	8
<i>Crenshaw v. Knight's Estate</i> , 156 S. W., 468 .....	9
<i>Cyc.</i> , vol. 40, p. 1648, 1649, note .....	11, 23
<i>Disston v. McClain</i> , 147 Feb., 114 .....	2, 19, 20, 21, 22
<i>Dunbar v. Dunbar</i> , 190 U. S., 351 .....	8, 9
<i>Eidman v. Tilghman</i> , 136 Fed., 141 .....	18, 19
<i>Flickwir's Estate</i> , 136 Pa. St., 374 .....	10
<i>Gaskins v. Roger</i> , L. R., 2 Eq., 248 .....	9
<i>Gilpins's Estate</i> , 14 Pa. Co. Ct., 122 .....	9
<i>Hanson's Death Duties</i> , p. 392 .....	9
<i>Hertz v. Woodman</i> , 218 U. S., 214, 215 .....	3, 17, 19, 23, 26
<i>Holdworth's Hist. of Eng. Law</i> , vol. 3, p. 126 .....	10
<i>Howe v. Howe</i> , 179 Mass., 546 .....	9
<i>In re Eaton's Estate</i> , 106 N. Y., Supp., 682 .....	9
<i>In re Rothschild</i> , 71 N. J. Eq., 210 .....	9
<i>Keiser v. Shaw</i> , 104 Ky., 119 .....	8
<i>Knowlton v. Moore</i> , 178 U. S., 41, 64, 110 .....	3, 7
<i>Lord Stafford v. Buckley</i> , 2 Ves. Sen., 170 .....	10
<i>Lumley on Annuities</i> , p. 392 .....	10
<i>Long's Estate</i> , 228 Pa. St., 594 .....	11, 16, 24, 25

	Page.
<i>McArthur v. Scott</i> , 113 U. S., 349 .....	12
<i>McCoach v. Pratt</i> (C. C. A.), 201 Fed., 1021 .....	1
<i>Minot v. Winthrop</i> , 162 Mass., 113 .....	9
<i>P. &amp; M. History of Eng. Law</i> , vol. 2, p. 132 .....	10
<i>Peck v. Kinney</i> , 143 Fed., 79 .....	9
<i>Pennock v. Eagles</i> , 102 Pa. St., 290 .....	25
<i>Reed's Appeal</i> , 118 Pa. St., 215 .....	24, 25
<i>Re Hutchinson</i> , 105 N. Y. App. Dec., 487 .....	9
<i>Re Tracy</i> , 179 N. Y., 501 .....	9
<i>Ritter's Estate</i> , 190 Pa. St., 108 .....	25
<i>Scott v. West</i> , 63 Wisc., 529, 571 .....	12, 24, 25, 26
<i>Smith's Estate</i> , 226 Pa. St., 304 .....	16
<i>Thompson's Estate</i> , 5 Weekly Notes cases (Pa.), 14 .....	9
<i>United States v. Fidelity Trust Co.</i> , 222 U. S., 159 .....	9,
13, 16, 17, 22, 23, 24, 26	
<i>Vanderbilt v. Eidman</i> , 196 U. S., 480 .....	13,
14, 15, 17, 20, 21, 22, 23, 24, 25, 26	
<i>Wright v. Callender</i> , 2 de G. M. & G., 652 .....	8

# In the Supreme Court of the United States.

OCTOBER TERM, 1914.

---

WILLIAM McCOACH, COLLECTOR OF INTERNAL Revenue for the First Collection District of Pennsylvania, petitioner,

*v.*

DUNDAS F. PRATT, FREDERICK A. DRAPER, S. Henry Norris, and William Lore, executors of the last will and testament of Ferdinand J. Dreer, deceased.

No. 149.

---

*ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.*

---

## BRIEF FOR PETITIONER.

---

### STATEMENT.

The original action was begun in the Northern District of Pennsylvania to recover legacy taxes levied under section 29 of the War-Revenue Act of *June 13, 1898* (30 Stat. 448, 464), which had been paid under protest. The Circuit Court rendered judgment on the pleadings for plaintiff executors (R. 29); and the same was affirmed by the Circuit Court of Appeals (201 Fed. 1021), on authority of



its own prior decision in *Disston v. McClain*, 147 Fed. 114.

The following statutes, and the following facts disclosed by the pleadings, are pertinent:

#### STATUTES.

The War-Revenue Act of June 13, 1898 (30 Stat. 464), as amended by the act of March 2, 1901 (31 Stat. 947), so far as material, reads:

SEC. 29. That any \* \* \* persons having in charge or trust, as \* \* \* executors or trustees, any *legacies or distributive shares* arising from personal property, where the whole amount of such personal property as aforesaid, shall exceed \* \* \* \$10,000 in actual value, *passing* \* \* \* by will \* \* \* to any person \* \* \* in trust or otherwise, \* \* \* are made subject to a duty or tax, etc.

SEC. 30. \* \* \* The tax or duty \* \* \* shall be due and payable in one year after the death of the testator and shall be a lien and charge upon the property \* \* \* for twenty years, or until \* \* \* within that period \* \* \* paid to \* \* \* the United States.

The section further provides for notice to the collector by the executor, within 30 days after qualifying; for a schedule in writing, showing the clear value of each interest, name of beneficiary, face amount of legacy, and amount of duty, to be delivered immediately to the collector; and for payment of tax and issuance of receipt, which entitles the executor to credit in his accounts.

The act of *April 12, 1902* (32 Stat. 97), repeals section 29, *supra*, effective *July 1, 1902*, with this qualification:

SEC. 8. That all taxes or duties *imposed* by section 29 \* \* \* prior to the taking effect of this act shall be subject as to lien, charge, collection, and otherwise to the provisions of section 30 (*supra*).

The act of *June 27, 1902* (32 Stat. 406), provides:

SEC. 3. \* \* \* where an executor \* \* \* or trustee \* \* \* shall hereafter pay any tax upon any legacy or distributive share \* \* \* the Secretary \* \* \* is hereby \* \* \* directed to refund \* \* \* upon proper application \* \* \* so much of said tax as may have been collected on *contingent beneficial interests which shall not have become vested prior to July 1, 1902*. And *no tax shall hereafter be assessed or imposed under said act, \* \* \* upon \* \* \* any contingent beneficial interest, which shall not become absolutely vested in possession or enjoyment, prior to July 1, 1902*.

All of the above sections will be found in greater detail in a footnote to *Hertz v. Woodman*, 218 U. S. 214, 215; and sections 29 and 30 of the original act can be found in full in a footnote to *Knowlton v. Moore*, 178 U. S. 61-64.

#### FACTS.

On *May 24, 1902*, Ferdinand J. Dreer died testate at Philadelphia, Pa. The will appointed plaintiffs as "executors and trustees," and made direct be-

quests "to be paid \* \* \* *by my executors*" before *May 24, 1903*, to each of two sons in the sum of \$10,000, and to each of two grandchildren in the sum of \$5,000. (R. 17, 19.) They were payable "in cash or securities at the option of *my executors*." (R. 18.) It gave unassignable annuities for the life of each, to the grandson, \$2,500, and to the granddaughter, \$2,000. These were payable quarterly, beginning *August 24, 1902*. (R. 19.)

After ten years, or sooner if the income warranted, the surplus annual income was to be divided into 56 equal parts, and annually paid, in unequal fractions, to 13 named institutions. (R. 19, 20.) As to the *residue* of the estate it was provided:

I give, devise, and bequeath (it) *unto my executors* \* \* \* upon the following trusts: To invest and keep invested the same, and take and collect and receive the rents and profits of my said residuary real estate, and the income of my said residuary personal estate; and when and as received to pay to each of my said sons an annuity of \$8,000, etc.

during their lives, with like provision against assignment as above. It also gave the "executors and trustees" general powers to sell, invest, and reinvest any property on any terms. (R. 23.)

On *June 5, 1902*, plaintiffs qualified, and on *May 29, 1903*, they filed with defendant collector a "*schedule of legacies or distributive shares arising from personal property*," showing that *they then held* for each of said four legatees *the full amount* of each direct bequest in money (R. 5, 6); and also for each,

an additional sum of money (which sum, respectively, the collector later adopted as the taxable value of each annuity), as follows:

For the \$2,500 annuity, the sum of \$38,293.05.

For the \$2,000 annuity, the sum of \$33,753.52.

For one \$8,000 annuity, the sum of \$10,975.68.

For the other \$8,000 annuity, the sum of \$15,264.82. (R. 6.)

As the answer avers that each assessment was "properly" made (R. 25, 26); as there was no objection to the method of making it or of computing the tax thereon; and, as departmental regulation required annuities to be assessed under *mortuary tables*, we might, if necessary, assume the assessment was so made, and that the mode of determining the tax was the proper one.

About *July 1, 1903*, the collector made the assessment and valued each legacy separately. (R. 25, 26.) The total tax on the four direct bequests was \$300, and on the two annuities of the grandchildren was \$810.55, and on the two annuities of the sons was \$254.05—a total on all of \$1,364.60.

On *July 13, 1903*, plaintiffs paid the tax under protest; and on *September 2, 1903*, they claimed refund, assigning *specific* ground therefor as follows (R. 6, 9):

Because no *residue* of personal property bequested to the trustees could possibly be either ascertained or paid over by the executors

to themselves, as trustees before July 1, 1902; nor was any such *residue* paid before that date; and the amount of \$157,456.75, on which the tax of \$1,692.75 was paid, was not taxable under the act of June 13, 1898, nor its amendments.

(Memo. The difference between the amount sued for and the above-named sum of \$1,364.60—viz: \$328.15—is not in dispute and will not be further noticed.) (R. 26, 27.)

The direct bequests and the annuities of the grandchildren were all payable *primarily from estate assets, and by the executors*. There is no claim that these annuity payments did not begin, as provided for on August 24, 1902; nor that *the full amount* of these direct bequests, and of the clear value of *all* these annuities (as fixed by plaintiffs themselves, in the filed schedule), was not actually in the hands of the executors in cash before July 1, 1902. They only claim that the "*residue*"—i. e., the *residuary trust estate* created by paragraph "Eighth" of the will (R. 20)—*had not been ascertained or paid over by the executors to themselves as trustees before that date*. This objection is pregnant with the above fact admissions. The executors were the trustees. The language of the bequest of the residuary estate is "*to my executors* \* \* \* upon the following trusts" (R. 20):

The case must be considered as to—

1. The direct bequests.
2. The annuity bequests to grandchildren.
3. The residuary trust life-income legacies to the sons.

## ARGUMENT.

### I.

#### THE DIRECT BEQUESTS.

Plaintiffs will undoubtedly insist that these are not taxable because the value of each, unless combined with the annuity bequeathed to the same beneficiary, is less than the minimum value taxable under the act. We concede this. *Knowlton v. Moore*, 178 U. S. 41, 110. For this reason their taxability will depend on the taxability of the respective accompanying annuity.

### II.

#### THE ANNUITIES TO THE GRANDCHILDREN.

As these differ only in amount, the granting language being similar, they may be considered together.

#### 1. They are taxable under section 29 of the act of 1898.

(a) The section taxes "legacies or distributive shares arising from personal property" exceeding "\$10,000 in actual value" held by "executors \* \* \* in charge or trust" and "passing \* \* \* by will \* \* \* to any person." The schedule voluntarily filed by the plaintiff executors pursuant to section 30 of the act, listed these annuities as "legacies and distributive shares arising from personal property \* \* \* held (by them) for" the grandchildren, and declared the actual clear value of each

at over \$33,000. There was no controversy about these interests "passing by will." They also aver these facts in their complaint, and therein, as in their protest, and claim for refund, they merely insist that the tax on these legacies "*was not due*." Having objected on this specific ground they waived all other objections to the tax. Especially is this so as they also thus limit themselves in their pleading (filed in 1906).

Whether the tax was "*due*" involves the application of section 8 of the act of April 12, 1902, presently to be considered. The essential facts making for taxability under the act of 1898 were admitted by plaintiffs.

(B) An annuity is a single right; not a series of separate rights, each measured by a separate successive payment.

The *whole* value of each annuity was averred to have been held by the executors, for each grandchild. Value is undisputed. Indeed, the collector assessed at the *very value* declared by the executors.

The *whole* value was the proper basis. Life insurance companies sell annuities for lump sums. They may be taken under garnishment (*Keiser v. Shaw*, 104 Ky. 119) and are provable at their whole value against a bankrupt estate. *Cobb v. Overman*, 109 Fed. 65, referred to without disapproval by this court in *Dunbar v. Dunbar*, 190 U. S. 351. Like any legacy, they are payable out of personalty and abate proportionately on the basis of their whole value. *Wright v. Calender*, 2 de G. M. & G. 652.

The Treasury Department has so administered this and previous acts. (See instructions to Collectors



quoted in *Peck v. Kinney*, 143 Fed. 79, and Boutwell's Dir. and Exc. Tax. Syst. of U. S. 203.)

All succession-tax acts either provide for determination of full value, or, without such provision, are held to require it. *Act of Geo. III*, c. 5, sec. 2, quoted in *Hanson's Death Duties*, p. 392; *Mass. act of 1891*, c. 425; *Minot v. Winthrop*, 162 Mass. 113, 126; *Howe v. Howe*, 179 Mass. 546, 553; *New Jersey act of 1894*, c. 210; *In re Rothschild*, 71 N. J. Eq. 210, 213; 72 N. J. Eq. 425; *Tenn. act of 1893*, c. 174; *Crenshaw v. Knight's Estate*, 156 S. W. (Tenn.) 468; *N. Y. Transfer Tax act of 1896*, c. 908; *In re Eaton's Estate*, 106 N. Y. Supp. 682; *Re Hutchinson*, 105 N. Y. App. Dec. 487; *Re Tracy*, 179 N. Y. 501, 510.

The *English*, *Massachusetts*, and *Tennessee* acts, *supra*, provide for the use of mortuary tables. Under the *Pennsylvania act of 1826*, providing no method of valuation, annuities were held taxable at their whole value. *Thompson's Estate*, 5 Wk. Notes Cases, 14, 19; *Bispham's Estate*, 24 ib. 79; *Gilpin's Estate*, 14 Pa. Co. Ct. 122. At his death Dreer was domiciled, and his will was probated, in Pennsylvania.

This court has held mortuary-table valuation to be proper. *Dunbar v. Dunbar*, *supra*; *United States v. Fidelity Trust Co.*, 222 U. S. 159. See also *Peck v. Kinney*, *supra* (76).

(C) Each is a taxable "legacy or distributive share."

The word "legacy" includes annuity, unless the will clearly indicates a contrary intent. *Bromley v. Wright*, 7 Hare, 334, 340; *Gaskins v. Roger*, L. R. 2

Eq. 248, 291. In *Flickwir's Estate*, 136 Pa. St. 374, 381, 382, the court, speaking of the date from which interest on legacies should run, said:

There is no substantial difference, *in legal aspect*, between the gift of *an annuity* for life and of the interest or *income of a fund* for life, etc.

The *Act of 36 Geo. III.*, c. 52, sec. 2, *supra*, uses this language:

that the value of any *legacy* given by way of *annuity*, etc.

Here is a clear legislative construction that an annuity is a legacy within the meaning of the Succession-Tax acts.

It is a "legal unit of right" (*United States v. Fidelity Trust Company*, *supra* (160), and of a peculiarly definite nature, as its history shows. Originally it was—like a rent—an incorporeal thing of which seizin could be had, and which was supposed to issue from the chamber of the grantor. *P. & M. Hist. of Eng. Law*, vol. 2, pp. 132, 133; *Holdsworth's Hist. of Eng. Law*, vol. 3, pp. 126, 127). While benefit of assizes was denied it, a special writ of annuity was devised for its protection, by which the annuitant recovered not merely arrears, but the annuity itself; so that for subsequent arrears it was only necessary to sue out a writ of *scire facias*. *Lumley on Annuities*, 392, 393. It could be limited to a man and his heirs, when, unlike other rights in personalty, it passed on his death to the heir. *Lord Stafford v. Buckley*, 2 Ves. Sen. 170; *Aubin v. Daly*, 4 B. & Ald. 59.

In the latter leading case an annuity so limited was nevertheless held to pass under a residuary bequest of "all the rest \* \* \* of *my personal estate*," etc. It is, therefore, plain that it has always been treated as an estate in personalty of even higher character than an equitable life estate, and that "the legal unit," looked at as a *whole*, is the *right* to periodical payments for a definite term.

The real question is when did this legacy vest, so as to be taxable?

The terms "vested" and "contingent" are opposing terms. The same interest can not be both vested and contingent at the same time, though an interest at first contingent may later become vested by the favorable event of the preventing condition.

Under substantive law, independent of this statute, these legacies were *never contingent*.

In 40 Cyc. 1648, the author says:

An estate is vested when there is an immediate right of present enjoyment, or a *present fixed right of future enjoyment*. \* \* \* An estate is contingent, on the other hand, while the person to whom, or the event *upon which it is limited to take effect*, remains uncertain. \* \* \* It is *not the uncertainty of enjoyment in the future, but the uncertainty of the right to that enjoyment*, which makes the difference between a vested and a contingent interest.

In *Long's Estate*, 228 Pa. St. (1910), 594, 599, the court said:

The rule of law is that a legacy must be assumed to be vested unless the contrary

intent of the testator *clearly* appears. In Smith's Appeal, 23 Pa., 9, our Supreme Court said: "In cases of doubtful construction, the law leans in favor of \* \* \* a vested rather than a contingent (estate)." \* \* \* In *Manderson v. Lukens*, 23 Pa., 31, it is said: "The question of vested or contingent is not to be tested by the certainty or uncertainty of obtaining the *actual* enjoyment, for that would make the character of the estate depend, *not upon the terms of its creation, but on the form of the result.* Neither does it depend upon the *defensibility* or *indefensibility of the right of possession.* \* \* \* If there is a *present right to a future possession, though that right may be defeated by some future event, contingent or certain, there is nevertheless a vested estate.*"

In *Scott et al. v. West et al.*, 63 Wis. 529, 571, the court said:

So bequests of legacies and personal property when the payment or distribution is to be made at a *future time certain to arrive*, and not *subject to a condition precedent*, are *deemed vested when there is a person in being at the time of the testator's death* capable of taking when the time arrives, even though his interest is liable to be divested by dying without issue, or diminished by future births. In such cases the legacy or bequest takes effect *in point of right*, on the death of the testator (citing many cases).

In *McArthur v. Scott*, 113 U. S. 340, 378, this court said:

For many reasons \* \* \* it has long been a settled rule \* \* \* that estates, legal or equitable, given by will, should *always be regarded as vesting immediately, unless the testator has by very clear words manifested an intention that they should be contingent upon a future event.*

Whether called "vested" or not, and because no conditions were attached thereto, they were of the kind of legacies taxable under the act of 1898. This court declared the rule in *Vanderbilt v. Eidman*, 196 U. S. 480; and later applied it, to completely cover this case, in the *Fidelity Trust Company case*, *supra*.

In the *Vanderbilt* case, through a residuary trust, the will created four distinct interests in a son who was 22 years old at the father's death. These were: (1) The right to receive income of the residue until he became 30 years of age; (2) *if he should live to be 30* the right to then receive one-half the principal; (3) on the same condition, the right to thereafter, and until he became 35, receive the income of the other half; and (4) *if he should live to be 35*, the right to then receive the other half of the principal (481). The executors conceded that "(1)" *supra* was a right "vested, and subject to taxation" (485). (Of that right, this court, in the *Fidelity Trust Company case*, later said (160): "It was assumed that the tax was payable *in a case like this*," thus paralleling right "(1)" with the right before it in the *latter case*.)

In this (Vanderbilt) case, holding against the taxability of the other three rights, it said, (501):

Concluding as we do that there was no authority, under the act of 1898, for taxing the interest \* \* \* given him by the residuary clause of the will, *conditioned on his attaining the ages of 30 and 35 years, respectively*, it is unnecessary to determine whether such interest was *technically a vested remainder* \* \* \*. In passing, however, we remark that in a case recently decided by the Court of Appeals of New York, *Matter of Tracy*, 179 N. Y. 501, it was declared that such interest was a contingent and not a vested remainder.

(It was likewise so held as to age conditions in *Rooney's estate*, 227 Pa. St. 127, 129.)

Holding that the *right* to possess, either *now* or in *future*, to be taxable under this statute, must be *unconditional*, the court further said (495, 496):

These provisions harmonize with the meaning which we have ascribed to section 29, since they clearly import that the tax is to be deducted from a *beneficial interest which the beneficiary was entitled to enjoy*. \* \* \* In view of the express provisions of the statute \* \* \* and of the absence of any express language exhibiting an intention to tax \* \* \* *in a case where the right to possession and enjoyment was subordinated to an uncertain contingency*, it would \* \* \* be doing violence to the statute to construe it as taxing *such an interest* before the period when possession and enjoyment had attached (and quoting from

*Matter of Hoffman*, 143 N. Y. 327). "Taxation \* \* \* may properly be compelled to wait until chances and possibilities develop into the truth of an actual estate possessed, or to which there exists an absolute right of future possession."

It was because of the condition attaching to the gift, on the event of which depended the question whether there ever would be such gift, that this court denied taxability.

Had the Vanderbilt will provided, *without any conditions*, that the whole income, or a fixed amount per year, should be paid the son during life, and issue been raised as to the taxability of that interest, this court would have held it to be a present *unconditional right*, and taxable as such. It would be a larger right than that on which the executors voluntarily paid a "whole present-value" tax, that being a right to receive income *only until* his thirtieth year.

Here each donee was in being, named, and capable of taking. Each annuity *was bestowed by words of present gift, not limited by any condition whatever, even as to payment*. True payments were to be made quarterly, beginning three months after the testator's death. A like condition obtained as to payment in the *Fidelity Trust Company case, supra*. This does not prevent vesting at death.

These payments were *not* deferred. The first payment covers the first quarter beginning with the day of testator's death. Had they been deferred, nevertheless, because the *gift itself* was unconditional, the annuity would still be taxable.

(D) It would not prevent their vesting.

In *Long's Estate*, *supra*, the court quoted its own earlier decision as follows:

Time is annexed, *not to the substance* of the gift, *merely to the payment*; \* \* \* The legacy, therefore, vested from the time of the testator's death. \* \* \* Where "a testator provided that his executors should keep the proceeds of land sold invested at interest and pay over to each of his nine grandchildren one-ninth of the interest thereof *annually*," \* \* \* Held that "the legacies to the grandchildren *were substantive gifts with time of payment postponed but certain and unconditional and therefore vested at the death of the testator.*" See also *Provenchere's App.*, 67 Pa. 433; *Middleton's Estate*, 212 Pa. 119; *Schwartz's App.*, 119 Pa. 337; *Safe Deposit & Trust Co. v. Wood*, 201 Pa. 420. We think the above cases and many others that might be cited fully sustain the proposition that the legacies provided in item 14 of the will vested at the death of the testator. (600, 601.)

See also *Smith's Estate*, 226 Pa. St. 304; *Burd Ex. v. Burd Admr.*, 40 Pa. St. 182, 185.

In the *Fidelity Trust Company* case the plaintiff was the residuary legatee under a will, to hold, in its then, or its altered form, a fund, on the trust to pay its income, in quarterly payments during her life, to a niece of deceased testator. This court said:

The interest of the niece was not a *contingent* right to income as it should accrue in her lifetime, it was a vested life estate in a fund,



changing in investment at the discretion of the trustee, but retaining its equitable identity. Objections like those that are made to treating a life estate as a present unity \* \* \* might be made to a similar treatment of absolute ownership in fee. In actual life a fee can be enjoyed only minute by minute; but, although eternal in theory of law, by the same theory at every moment it is all and wholly in the owner's hands. \* \* \* It deals \* \* \* with the interest, that is, the legal unit of right, not with the money received before a given moment. No better example of such an interest could be given than a life estate in a fund the enjoyment of which actually has begun; none that more clearly and absolutely excludes the qualification "contingent" in the sense of the law. *Vanderbilt v. Eideman*, 196 U. S. 480, concerned a life estate in remainder \* \* \*. It was assumed that the tax was payable in a case like this. (159, 160.)

If, as was said by this court in the *Hertz case*, *supra*, "the subject of the tax is the right of succession, which passes by death, to a vested beneficial right of possession or enjoyment of a legacy or distributive share"; or if, as said in the *Fidelity Trust Company case*, *supra*, the subject is "the interest that is the unit of right," what is lacking in the case of these annuities? At the testator's death, each grandchild gained a right to succeed to a fixed sum per year payable quarterly out of the corpus of the estate. It was a valuable right, on which a banker would extend credit. It could have been protected in court

at any time after the death of testator. Surely this right to a fixed sum quarterly, secured by the whole estate, was more definite than a right to receive such uncertain income as might be produced by a fund composed of but a fractional part of the estate.

Nor are the grandchildren concerned with the ascertainment of the "residue" bequeathed under paragraph "eighth" of the will. They draw not from that trust fund, but from the corpus of the estate; and their rights would be unaffected if the whole of that paragraph were held void. Equally is this true as to the objection that the residue could not be paid, and had not been paid by the executors, to themselves as trustees.

**2. The tax on these annuities was "imposed" before July 1, 1902.**

The act of April 12, 1902, repealing section 29, *supra*, to become effective July 1, 1902, by section 8 thereof saved "all taxes or duties *imposed*" prior to that date. The executors claimed that a tax could not be said to be "*imposed*" until "*due*." And, as under section 30, the tax was not "due and payable until one year after the death of the testator" (in this case May 24, 1903), it was not "imposed" until long after July 1, 1902; and so was not saved from repeal by the exception of section 8.

This was the sole basis alike of their protest, refund claim, and suit, and is the *only* question properly in this case. It was also the *only* matter decided by the trial court. Its opinion, after declaring a purpose to follow *Eidman v. Tilghman*, 136 Fed. 141,

(which case also was unavailingly urged upon this court in the *Hertz* case, *infra*), continued:

No tax was saved by section 8 of that statute *unless it had become due and payable and had thus become already imposed* before July 1, 1902, the date when the repealing act took effect.

While this case was pending in the Circuit Court of Appeals, and in May, 1910, that question was certified to this court in *Hertz v. Woodman*, 218 U. S. 205, Woodman died March 15, 1902. His will was probated in May, 1902, and left legacies of the clear value of \$166,250 to the defendants in error. On these the Collector took the tax. It was claimed his act was unlawful; that, as the death occurred within the year preceding July 1, 1902, no tax could be due or payable, and, therefore, could not be said to be "imposed" before that date. The *Tilghman* case (*supra*) and the *Disston* case, 147 Fed. 114, were relied on by the defendants in error, and the former was used in the minority opinion. The majority of this court refused to follow these cases, and said:

To repeat, then: The *subject* of the tax or duty exacted by section 29 is the right of succession which passes by death, to a vested beneficial right of possession or enjoyment to a legacy or distributive share. Upon the facts certified, the right of succession which passed by the death of the testator was an absolute right to the immediate possession and enjoyment, a right neither postponed until the falling in of a life estate \* \* \* nor subject to contingencies (p. 219). \* \* \*

The conclusion we reach is that upon the passing by death of a *vested right* to the immediate possession or enjoyment of a legacy or distributive share, there was *imposed* the tax or duty exacted upon *every such right of succession*, which was saved by the saving clause of the repealing act (224).

The above decision demanded an entire change of front before the Circuit Court of Appeals in behalf of the executors. The Government, conceding that the facts of this case were like those in the Disston case, asked a reconsideration of the rule announced therein. (R. 34.) The court insisted on again applying that rule, attempting to distinguish this case and the Disston case from the *Fidelity Trust Company case*, by suggesting that the latter had no concern with the phrase "legacy or distributive share" in the act of 1898, which phrase alone it said was considered in the former case.

This attempt was futile. The act of June 27, 1902, *carved out of what was otherwise taxable* under the act of 1898, "contingent beneficial interests not vested," etc. This court must have regarded the interest as otherwise taxable under the act of 1898, before it could have occasion to consider whether the particular interest was within the exception not taxable under the above act of 1892. Eight years before in the *Vanderbilt case*, *supra*, it had held that the question, *under the two acts*, was the same, saying:

In view of the provision for refunding we see no escape from the conclusion that *this statute* (act of June 27, 1902) *was, in a sense,*

*declaratory of what we hold was the true construction of the act of 1898. \* \* \* The act of 1902 was, therefore, a legislative affirmation of the construction given to the act of 1898, prior to the amendment of 1901 (500).*

Therefore, when this court, in the *Fidelity Trust Company case*, interpreted the act of 1902, it was to that extent also interpreting the act of 1898. And the meaning given by it to the latter act was opposed to that given it by the Circuit Court of Appeals in the *Disston case*.

The reasons given by the Circuit Court of Appeals for distinguishing the case at bar from that of an equitable life estate are thus stated in the *Disston case*, *supra*, pp. 117, 121:

\* \* \* The legacy in question, under the will \* \* \* is not a sum certain given *once for all* to the legatee, but a yearly sum of \$15,000 to be paid to Rachael Asch in stated quarterly payments during the term of her natural life, out of the income of the whole estate, real and personal, of the testator, devised and bequeathed to trustees for the purposes of his will. The natural meaning of such a provision and of the language used would seem clearly to be *a series of legacies or bequests vesting in possession or enjoyment at stated intervals; but each contingent, before vesting, on the legatees being alive when it became due*, the tax on which is not to be paid, as we shall see presently from the authoritative opinion of the Supreme Court in the *Eidman case*, until and as it takes effect in possession or enjoyment (117). \* \* \* But

however that may be, it must be observed again, that the express bequest of all the income, be it more or less, from the entire residuary personal estate, during a definite period, differs widely, as regards the question here presented, from the bequest of a definite sum to be paid yearly out of the income of both real and personal estate collected by the trustees (120-121).

The court entirely misapprehended the force of the *Eidman (Vanderbilt)* decision. It is evident also that it did not have in mind the "legal unit of right" referred to by this court in the *Fidelity Trust Company case*.

An annuity is not a right to a series of legacies as they accrue. It is a right to a definite periodical payment *for a fixed term*. The decision of the Court of Appeals puts an annuity on no higher plane than a "spendthrift trust," where the amount of the periodical payment is left entirely to the discretion of the trustee. In the case at bar the question is whether the "legacy" under Dreer's will was the money actually paid from time to time; or *was the right, as a whole, to receive that money at stated periods and for a definite time*. The court, in holding it to be the former, entirely overlooked the fact that *the right was not only to receive a definite amount at stated periods, but that it was for a definite time*.

**3. These annuities were never within the operation of the act of June 27, 1902.**

That act forbade *thereafter assessing or imposing any tax upon "any contingent beneficial interest, not absolutely vested in possession and enjoyment, prior*

to July 1, 1902," and authorized refund of any tax thereafter collected on any such interest.

As already demonstrated under "II," *supra*, these annuities were *never* contingent. The author in 40 Cyc. 1649 note, says: "Contingent" is the quality of being casual, the *possibility* of coming to pass \* \* \*; all anticipated future events which are *not certain* to occur are contingent events and may be properly denominated mere "possibilities." These interests were *rested* from the moment the will took effect by the testator's death.

Assuming there is no distinction (legal) between an annuity and a life estate in income, this court has determined this question against these executors by its decision in the *Fidelity Trust Company case* and in the *Hertz case*, *supra*.

*Both* because these interests became *rested* at the death of the testator, and as well because they were always unconditional and never contingent, this case stands, as to them, as if the act of June 27, 1902, had never been passed by Congress.

### III.

#### THE RESIDUARY TRUST, LIFE-INCOME LEGACIES TO THE SONS.

The larger questions here have been fully argued under "II," *supra*.

While "annuity" is used in the will in creating the interests, it is almost a misnomer. Similar interests are termed "legacies" and their owners "residuary legatees" in the *Vanderbilt case*, *supra* (490) the *Fidelity Trust Company case*, *supra* (159),

*Reed's Appeal*, 118 Pa. St. 215; and *Long's Estate*, 228 Pa. St. 601. They are like those in the two cases first named, save that in the *Vanderbilt* will the income estate was for years; and in both the *whole* income was absorbed, while here it is absorbed only to a certain maximum (\$8,000). These differences are unimportant.

In the *Fidelity Trust* case the income was being received. There is no averment that it was not in this case. It should have been, for the executors were bound to pay over income "*when and as received*." And the residue—not otherwise specifically disposed of—passed in kind to the executors at the testator's death. In *Scott v. West*, 63 Wisc. 529, 555 the court said:

Of course the legal title to personal property became vested in the executor on the probate of the will, etc.

The executors concede they held the whole mortuary table value of these interests in cash.

But we have seen that the "unit" to be taxed is the *unconditional* right to receive. That right obtained from the time of the death of the testator. Where an interest, *originally* contingent, is to become vested, the removal of the preventing condition may of itself bring, either *actual* possession, or *only an absolute present right to future* possession. In either event the interest becomes taxable forthwith. Possession was not necessary to remove any condition here. There never was any.



Ascertainment of actual corpus of the residue is not, any more than is formal transfer from the executors to themselves as trustees, an essential pre-requisite to the imposing of the tax. An unconditional residuary legacy, though filtered through a trust, vests at the testator's death. *Ritter's Estate*, 190 Pa. St. 108, 109; *Reed's Appeal*, *supra*; *Long's Estate*, *supra*; *Vanderbilt case supra*. This is wholly at variance with the idea that the residue must be ascertained exactly before the interest of the beneficiary can be said to have vested. The bequest is phrased in language of *present gift*, identical with that creating the trust in the Vanderbilt will. The unconditional right of each, the executors and beneficiaries, vested at the same time. Whether the volume of income was large or small, the sons were entitled to it whenever received by the executors.

And what magic would inhere in the mere formality of a transfer from themselves to themselves—from pocket to pocket. In such a case were a formal transfer needed, the law would make it. In *Pennock v. Eagles*, 102 Pa. St. 290, 295 the court said:

When the hand to pay is the hand to receive the law will presume payment.

But no such transfer was demanded. The bequest of the "residue" was to "*my executors \* \* \** upon the following trusts." The office of executor is itself in law, as it became here in fact, a trust. In *Scott v. West*, *supra*—where almost the same duties were imposed by will on executors, but without any

technical bequest to them, the court held them to be such trustees by implication of law, and to have held in such capacity from the beginning, saying (555):

The office of an executor is in the nature of a trust, in the discharge of which he acts as a trustee. (See also p. 557.)

The interest never having been *conditional*—i. e. *contingent*—the tax was imposed by law on May 24, 1902; and for these reasons neither the act of April 12, 1902, nor the act of June 27, 1902, has any application.

A provision for increase from \$8,000 to \$10,000 per year is unimportant, because (1) it was conditioned "*if my said dwelling house shall be sold,*" and is *yet* contingent; and (2) the tax was laid only upon the unconditional interest represented by the right to income up to \$8,000.

#### CONCLUSION.

Every question in this case has been foreclosed against these executors by decisions of this court in the *Vanderbilt*, *Hertz*, and *Fidelity Trust Company* cases.

The judgment of the Circuit Court of Appeals should be reversed, with instructions to that court to order the trial court to dismiss the action.

WM. WALLACE, Jr.,  
*Assistant Attorney General.*

JANUARY, 1915.

No. 149.

---

*In the Supreme Court of the United States.*

OCTOBER TERM, 1914.

---

WILLIAM MCCOACH, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST COLLECTION DISTRICT OF PENNSYLVANIA, PETITIONER.

v.

DUNDAS F. PRATT, FREDERICK A. DREER, S. HENRY NORRIS, AND WILLIAM LORE, EXECUTORS OF THE LAST WILL AND TESTAMENT OF FERDINAND J. DREER, DECEASED.

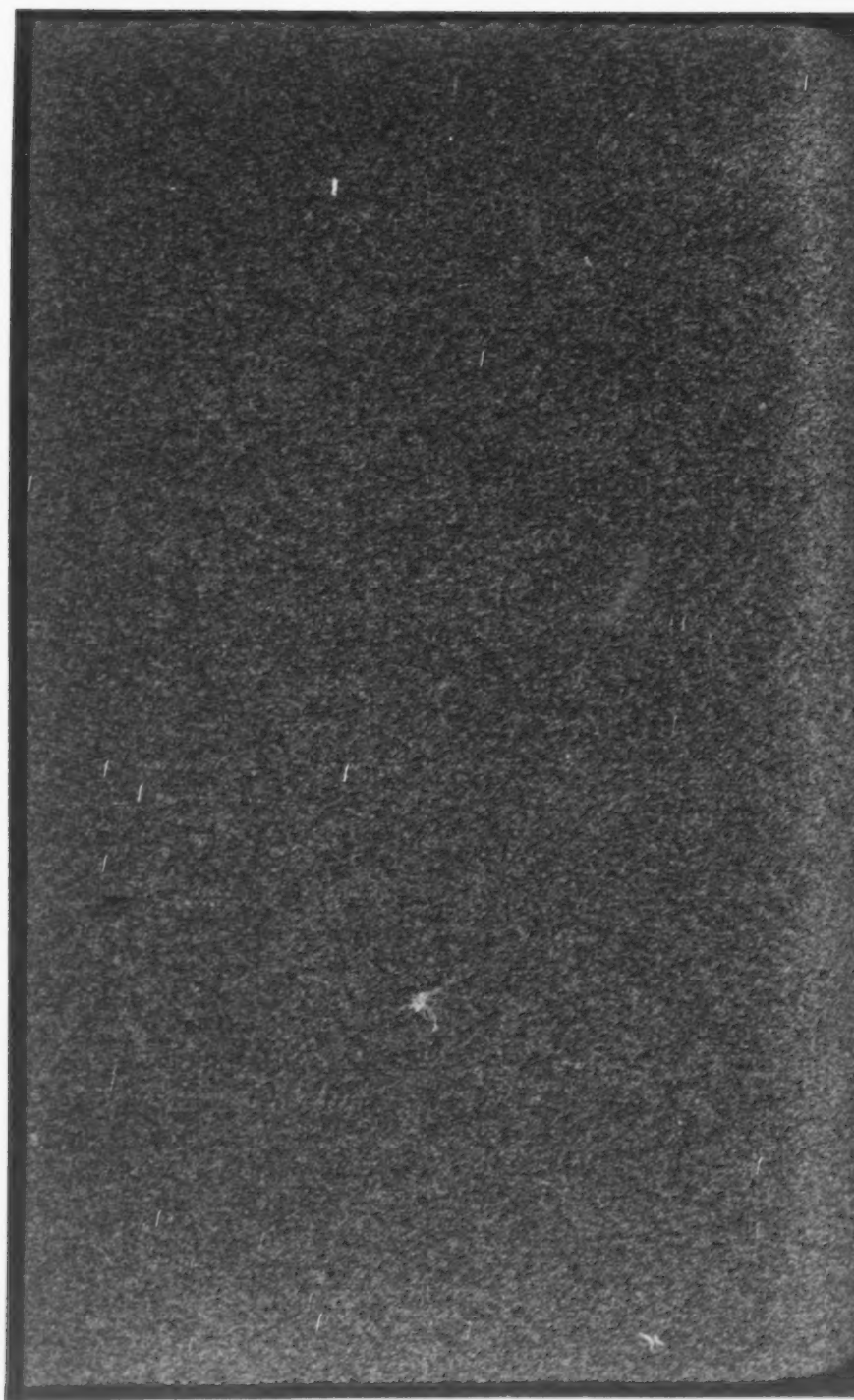
---

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

---

MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF  
ON BEHALF OF THE PETITIONER.

---



# In the Supreme Court of the United States.

OCTOBER TERM, 1914.

WILLIAM McCOACH, COLLECTOR OF INTERNAL revenue for the first collection district of Pennsylvania, petitioner,

v.

DUNDAS F. PRATT, FREDERICK A. DREER, S. Henry Norris, and William Lore, executors of the last will and testament of Ferdinand J. Dreer, deceased.

No. 149.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

## MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF ON BEHALF OF THE PETITIONER.

Comes now William McCoach, collector, etc., as the petitioner in the above-entitled cause, through the Solicitor General, and moves this court, in accordance with subdivision 4 of rule 20 of the rules of this court, for leave to file a supplemental brief of argument in behalf of the petitioner herein upon the following grounds:

### I.

The decision of this court announced on Monday, January 25, 1915, in cause No. 450, October term, 1914, entitled "*United States, Appellant, v. Benjamin F. Jones, jr., as Sole Administrator of the Estate of*

*Adelaide P. Dalzell, deceased,*" and announced about an hour before this cause was reached on the call for argument, bears directly upon the case at bar, and it is believed can and should be analyzed and distinguished as was not done and could not be done for the reason above stated before the argument and submission of this case.

## II.

The several points now urged upon this court in this case in the brief of respondents, filed herein on January 21, 1915, were none of them urged in either court below, in each of which courts the sole question considered respectively was determined by this court adversely to the view expressed by each court below, and the reasons making against these new contentions ought to be before this court.

## III.

Point IV in the brief so filed for the respondents in this case discloses that an amount perhaps running into millions may be dependent upon the determination thereof. It is believed that in the interest of justice every reason making for or against these new contentions and for or against the application of the decision in said cause No. 450 should be before this court in advance of the determination of this case.

Notice of this motion has been given opposing counsel.

JOHN W. DAVIS,  
*Solicitor General.*

JANUARY, 1915.

U. S. Supreme Court, D. C.

FILED

JAN 29 1915

JAMES O. MAHER

CLERK

No. 149.

---

*In the Supreme Court of the United States.*

OCTOBER TERM, 1914.

---

WILLIAM MCCOACH, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST COLLECTION DISTRICT OF PENNSYLVANIA, PETITIONER,

DUNDAS F. PRATT, FREDERICK A. DREER, S. HENRY NORRIS, AND WILLIAM LORE, EXECUTORS OF THE LAST WILL AND TESTAMENT OF FERDINAND J. DREER, DECEASED.

---

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

---

SUPPLEMENTAL BRIEF FOR PETITIONER.

---

## INDEX.

	Page.
<b>STATEMENT</b> .....	1-3
Ground of decision in trial court .....	1
Decision rejected by this court .....	2
Ground of decision of C. C. A .....	2
Doctrine rejected by this court .....	2-3
<b>ARGUMENT</b> .....	3-17
Grandchildren's annuities .....	3-18
New reasons urged by executors in this court ..	3
(1) Delayed first payment .....	3
(2) Effect of probate acts on taxability ..	3
(3) "Assessment" too late .....	3
1. Payment at end of quarter beginning at death not deferred .....	4
Refunding act not involved because these legacies never contingent .....	4
Deferred payment would not defeat taxa- bility .....	4-5
This court has so held .....	5
2. Section 51, Pennsylvania Laws, yields to ex- pressed intention of testator .....	5
Section 22, <i>ib.</i> , gives full year to present claims .....	5
Analysis of <i>Jones</i> case, No. 450, October term, 1914 .....	6-12
Reasons against—	
(1) Tax must be paid before claims could be adjudged in probate ...	6
(2) Executor must declare amount of tax in schedule .....	6
Recognized that a tax may be already imposed .....	6
<i>Hertz</i> case analyzed .....	6-7
(3) Section 30 expressly authorizes col- lection <i>without administration</i> of estate .....	8
Adjudication of claims unnecessary.	8



# ARGUMENT—Continued.

## 2. Section 51—Continued

### Reasons against—Continued.

	Page.
(4) <i>Jones</i> case rule would cut off all taxes at least one year back of July 1, 1902 . . . . .	8-9
(5) Heir of legatee dying day after testator would take . . . . .	9
<i>Vanderbilt</i> case test "unconditional" . . . . .	9
(6) Rights of legatees . . . . .	10
Refunding act can not apply . . . . .	11
(7) Summary as to <i>Jones</i> case . . . . .	11-12
Burden on executor to allege existence of debts . . . . .	12
The assessment . . . . .	12
Subsequent to imposition . . . . .	12
A step in collection . . . . .	13
All taxes are imposed before collection . . . . .	13
Executor controls assessment . . . . .	13
He would thus control taxability . . . . .	13
Assessment and payment contemporaneous acts . . . . .	13
Law imposes tax here . . . . .	13
Sons' life incomes . . . . .	14-17
Statement of contention . . . . .	14
Analysis of will . . . . .	14
Corpus of residuary trust not determinable until death of grandchildren and sons . . . . .	15
Result, never could be taxed . . . . .	15
Identification not prerequisite to taxability . . . . .	15
These correspond to <i>Vanderbilt</i> and <i>Fidelity Tr. Co.</i> income estates . . . . .	15-16
Transfer from executors to trustees not necessary . . . . .	16
Reasons . . . . .	16
Respondents' criticism of our original brief . . . . .	16
Respondents' fourth point . . . . .	17
Respondents' fifth point . . . . .	17
CONCLUSION . . . . .	17-18
APPENDIX A.—Analysis of respondents' citations . . . . .	19-21
APPENDIX B.—Copy of section 30, act 1898, amended . . . . .	22-23

# III

## AUTHORITIES CITED.

	Page.
<i>Diaston</i> case, 147 Fed. 114 .....	2
<i>Gannon v. Dale</i> , 1 Law Rep. Ch. Div. 276, 278 .....	4
<i>Hertz v. Woodman</i> , 218 U. S. 220 .....	2, 6
<i>Pepper &amp; Lewis</i> Dig. Pa. Laws, 1512, sec. 179 .....	5
<i>Robbins v. Legge</i> , 2 Law Rep. Ch. Div. 12 .....	4
<i>United States v. Fidelity Trust Co.</i> , 222 U. S. 159 .....	2
<i>United States v. Jones</i> , No. 450 Oct. Term, 1914 .....	6
<i>Vanderbilt v. Eidman</i> , 196 U. S. 500 .....	2
2 <i>Woerner's Law on Admr.</i> , sec. 454 .....	4



# In the Supreme Court of the United States.

OCTOBER TERM, 1914.

---

WILLIAM McCOACH, COLLECTOR OF INTERNAL revenue for the first collection district of Pennsylvania, petitioner,

*v.*

DUNDAS F. PRATT, FREDERICK A. DREER, S. Henry Norris, and William Lore, executors of the last will and testament of Ferdinand J. Dreer, deceased.

} No. 149.

---

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

---

## SUPPLEMENTAL BRIEF FOR PETITIONER.

---

### STATEMENT.

The sole reason assigned by the trial court in 1908, for its decision, is as follows:

No tax was saved by section 8 of that statute (Apr. 12, 1902), *unless it had become due and payable, and had thus become already imposed before July 1, 1902, the date when the repealing act took effect.*

Rejecting this interpretation in 1910, in *Hertz v. Woodman*, 218 U. S., 205, 220, this court said:

Much has been urged because the tax was not "*due and payable*" when the repealing act took effect; and the contention is that, because not due and payable, no tax had been theretofore *imposed* within the intent of the saving clause. What we have already said answers this.

When this case reached the Circuit Court of Appeals, respondents accordingly changed front, and there relied, without other argument, in a 16-line brief, on a previous decision of that court in the *Disston* case, 147 Fed. 114, to the effect that an annuity is a *series of separate rights*, each measured by an individual periodical payment, and each conditioned on the annuitant being alive at the due date of each payment. The *Disston* case is quoted in our original brief, page 21, and the decision of the Circuit Court of Appeals is found in 201 Fed. 1021.

This "serial" rule was rejected by this court in the *Fidelity Trust Company* case, 222 U. S. 159, 160 (our original brief, pp. 16, 17). The attempt of the Circuit Court of Appeals to distinguish the latter case as dealing only with the words, "*contingent* beneficial interest not vested in possession and enjoyment," in the act of June 27, 1902, while it was said to be considering language defining the subject of the tax found in section 29 of the act of 1898, is unavailing. This court in 1904 had already decided in the *Vanderbilt* case, 196 U. S. 500, that so far as *contingent* interests

were concerned, the subject of tax defined in the two acts was identical, and that the former act was really a legislative construction of section 29 of the earlier act. (Our original brief, pp. 20, 21.) Therefore this court in the *Fidelity Trust Company* case was deciding the same question presented by the *Disston* case. And it determined it differently, thereby making unavailing in this court the only ground relied on by the Circuit Court of Appeals in this case.

#### ARGUMENT.

Under these circumstances, respondents in their brief filed January, twenty-first instant, as to the annuities to the grandchildren, advanced three new reasons why the tax could not be said to be "imposed," nor the legacy vested in possession and enjoyment, as follows:

(1) The first payment was not due until August 24, 1902.

(2) Under the Pennsylvania law no legacy was payable until after expiration of the period for proof of claims, or one year after the granting of administration.

(3) The annuities were not here assessed until July 1, 1903.

As to point (1), we submit:

(a) While the first annuity payment was to be made August 24, 1902, it was a quarterly payment, made at the end, rather than at the beginning, of the quarter beginning at the testator's death.

Payments so made at the end of the first quarter are held not to be deferred payments in *Robbins v. Legge*, 2 Law Rep. Ch. Div. 12, and *Gannon v. Dale*, 1 ib., 276, 278. In 2 *Woerner's Am. Law of Administration*, sec. 454, it is said:

Annuities given by will *shall commence* on the testator's death. The *first* payment is *therefore* to be made *at the* expiration of one year thereafter, *or if payable quarterly, at the end of the first quarter.*

The question only arises under the Repeal act of April 12, 1902, saving a tax "imposed" before July 1, 1902, because the Refunding act of June 27, 1902, deals not with all legacies, but only with such as, originally "*contingent*," had *ceased to be so*, by vesting in possession or enjoyment. The interest *not* taxed in the Vanderbilt case was of that nature. But whether this word "*contingent*" be given its common-law meaning, or be read as synonymous with "unconditional," it can not grasp any of these legacies, for *none of them* were ever either contingent or conditional. The latter word is defined in the Vanderbilt case, and the former is used in the *Hertz* and *Fidelity Trust Company* cases (our original brief, pp. 16, 17, 19), and its common-law definition is given on pages 11 and 12 of that brief.

(b) Had it been a deferred payment, being at a fixed date certain to arrive, this could not postpone imposition of the tax, nor the right to immediate possession and enjoyment of the thing taxed, which was the "unit of right" to take each periodical pay-

ment. If it could, the second, or any successive periodical payment must have a like effect. But this was held otherwise in each, the *Vanderbilt* and *Fidelity Trust Company* cases, *supra*. The test is whether there is any *condition* in the gift, the event of which, if adverse, may prevent it from becoming a gift.

(c) If you may not defer payment a single day, without postponing taxability, how was this court, in the two last-named cases, able to uphold valuation of the taxed "unit," on the basis, not of payments already made, but of the deferred payments, calculated by mortuary tables?

As to point (2), the force of the probate acts, we submit:

(a) Section 51, act of February 24, 1834 (Pa. Laws, 83), quoted in respondents' brief, p. 17, merely fixes the starting of interest on legacies, yielding always to any intention of the testator, if expressed in the will. *Pepper & Lewis Dig. Pa. Laws*, 1512, No. 179. This will prescribed its own time of payment as to each of these eight legacies.

(b) Section 22 of the same act, quoted on same page of the respondents' brief, allowed creditors a full year *after the granting* of administration to present claims, and of course *payment* of claims and expenses must occur at a later date. We submit that the Revenue, Repeal, and Refunding acts may not be so read as to require determination and payment of claims and administrative expense, or even determi-



nation of claims in probate, as a condition precedent to the "imposition" of tax or to the coming into existence of a "contingent beneficial interest, absolutely vested in possession or enjoyment," as suggested by this court in *United States v. Jones*, No. 450, October term, 1914, decided January 25, 1915.

These considerations oppose that conclusion:

1. Section 30 of the Revenue act (quoted in an appendix hereto) requires the executor to *himself* assess and pay the tax *not later than a year after the testator's death*, or sooner if he be sooner ready to distribute estate. In the case at bar, therefore, the tax must have been paid *not later than May 24, 1903*. But as the executors were appointed June 5, 1902, claims could not be legally adjudicated in probate until June 5, 1903, or 12 days after the tax must have been paid. Therefore, the whole tax must necessarily be determined and paid *before* the claims could be legally known in probate.

2. In the duplicate schedule, which is the assessment, and is to be filed any time after qualification of the executor within the period named in "1" above, the executor must, under oath, himself *value* the legacy in his charge and declare the *amount* of tax duty which "has accrued" or "shall accrue" thereon. This recognizes that the tax may be *already imposed* by law under section 29.

In *Hertz v. Woodman*, 218 U. S. 220, this court said:

No further event could make their title more certain nor their possession and enjoy-

ment more secure. *The law, then unrepealed and in full force, operated to fasten, at the moment this right of succession passed by death, a liability for the tax imposed upon the passing of every such inheritance or right of succession. The time for scheduling or listing was practically identical with the time for payment, and the listing or scheduling was required to be done by the executor charged with the payment, but might be and was postponed for reasons of grace and convenience. This is almost universal under any taxing system. The liability attaches at some time before the time for payment. But the liability for the payment of the tax exacted under section 29 \* \* \* accrued or arose the moment the right of succession by death passed to the defendant in error, and the occurrence of no other fact or event was essential to the imposition of a liability for the statutory tax upon the interest thus acquired.*

The probate acts of Illinois were similar to those of Pennsylvania. They allowed six months to prove claims, and provided for distribution of legacies only after determination that there was enough to pay all claims. The certified case disclosed that the testator died March 2, 1902, *less than four months before* the repeal date, and that the tax was not in fact assessed and collected until 1905. The record there disclosed, therefore, that the claims could not have been adjudged in probate until after July 1, 1902; so that, were that *adjudication* a condition precedent to taxability, the decision in the *Hertz* case must have been otherwise.

3. Section 30 also provides that, *where no administration shall have been granted or allowed* under existing laws, the collector shall assess the duty. Thus, by the very terms of the act, *the tax may be imposed, assessed, and collected without there ever being any administration at all*. This is a complete answer to the argument that it can not be determined whether there will be any estate for legacies until claims and administrative expense have been paid. Of course it can not be adjudicated in probate; but such *adjudication* is not at all necessary to a valuation for purposes of the tax. That is to be made on the actual facts as then known to the executors, just as a banker, possessed of like knowledge, would value the legacy to decide its worth as collateral to a loan. Probate adjudication of claims, while essential to administration, is not at all so for the purpose of the tax. Had this been so, Congress would have been forced to have the collector initiate administration rather than assess without it. Assume an estate with known assets worth \$1,000,000, and actually known to be practically free of debt, the testator having always been a money lender. Why should the valuation of a \$2,500 annuity from that estate be impossible until after probate adjudication of "no claims"? While the matter might not be so simple in more involved estates, it would be none the less possible. And, as the executor makes his own valuation, which is *final* in the absence of fraud, there is no danger of injustice by this method.

4. The rule of the *Jones* case, if made general and applied to cases like the one at bar, would prevent a

taxing of the direct and unconditional legacies of \$10,000 to each son, even if they had been in double their amount and immediately payable by the terms of the will. And yet it was never claimed at any stage in this case that these legacies, postponed for a year as their payment was by the will, would not have been taxable had they exceeded \$10,000. The rule would really cut off legacy taxation in all cases, not as of date July 1, 1902, with a saving clause in addition, as Congress intended; but would rather relate back for some indefinite period over a year before, and long before the approval of each act, cutting off all taxes where the deceased had died within that time. And this despite the fact that the Repeal act was made to take effect only at a date several months after its passage, or at the end of the fiscal year in Government business.

5. Had the legatee son died in this case two days after the testator, can anyone doubt that the \$10,000 direct and unconditional legacy would have passed to his heirs? And how could this result follow, unless that legacy had passed by the will, on the death of the testator, to that son? The truth is the Vanderbilt case furnishes the real test of taxability, i. e., the *conditional* or *unconditional* character of the legacy. If it was originally unconditional, or if, though at first conditional, it has since become relieved of the condition, it is taxable—otherwise not.

And the thing taxed is the unit of right to take future periodical payments. When this is granted without condition, and it passes by death, it is a sub-

stantial thing of real value in the commercial world. It is a basis for present credit both at banks and elsewhere. The value of the right is not enlarged in the least, as it can not be diminished in the least, by anything that can happen thereafter. Why then should its owner not pay this tax? This court has heretofore in all its decisions extended the tax to the substantial unconditional interest, against all technicalities; and has as steadily refused to do so until that interest has become actual and real. Unless the general language of the *Jones* case be limited, it is a departure from that principle. That decision may be upheld on the ground that though the time for his appointment had not expired "under the existing law" of Pennsylvania, no administrator was in fact appointed or qualified before July 1, 1902, and therefore there was no official who could have received or held in charge any distributive share before that date, as was probably essential to the imposition of tax under section 29. But we submit it ought not to rest upon the ground that payment of estate debts and claims is an essential to the passing of the distributive share by will or succession, or to the imposition of the tax under section 29. The extent of claims might affect the *value*, but can not destroy the entity. The legacy or distributive share in a given case might be valueless; none the less was it a right given by will or by law.

6. These legatees could protect their interest passing by the will against threatened injury by court proceedings begun the day after the testator's death.

And while creditors may prevent distribution of assets, or follow them into the hands of distributees, or compel administration, they have but a lien on the assets, which they may waive; and the general right, subject to this lien, is elsewhere.

7. For the reason stated in "1-(a)" *supra*, the Re-funding act of June 27, 1902, has no application to this phase of the question. These bequests were none of them originally "*contingent*" or conditional. The question, therefore, as to them is simply, were they imposed within the meaning of the Repeal act of April 12, 1902, before the repeal date. The three successive steps are: (1) Imposition by law, (2) filing the schedule, and (3) payment of the tax. No tax can be collected save one *already* imposed and assessed, and none can be assessed save one *already* imposed.

Summarizing as to the *Jones* case:

It is distinguishable because no administrator was appointed until July 14, 1902; also because, while the heirs there took the whole residue over debts and expenses, *under the law*, here were direct bequests ordered paid at specified times, or quarterly annuities periodically payable from time of death, or life incomes from property subject to the trust from the time of death. It might be said in the *Jones* case that the thing passing *by law* could have no definitive form until debts and expense had been paid. This may not be said of any of these legacies; for even the residuary trust under paragraph "eighth" of the will, was not the *ultimate* residue, and

there was abundant income-producing property not specifically disposed of, that vested, under that paragraph, in the executors, as soon as they qualified in that office.

(c) Moreover, the burden should be on the plaintiff executors to allege the existence of debts sufficient to have affected these legacies—definitely payable as they were at fixed periods accord to the provisions of the will. Unless the testator was insane when he framed the will, it evidences him to have been a man of vast wealth. Not only is there no averment of debts here, but the complaint rather concedes and avers that the full value of each legacy was in the hands of the executors in money, and, so far as appears, from the very beginning; the only point made being that it had not been technically transferred from their right pockets as *executors* to their left pockets as trustees before July 1, 1902. So that the inference that the *executors* may have possessed these amounts from the moment in June, 1902, when they qualified, is not negated in this case.

As to point (3), the assessment, we submit:

(a) Conceding, as they do in their brief (p. 24, middle), that this court in the *Hertz* case decided that section 29 *alone* imposed the tax, and that the "due and payable" clause of section 30 had nothing to do therewith, the executors nevertheless urge "assessment"—another requirement of section 30—as preventing a tax being sooner imposed. They cite many cases to the effect that there can be no liability to *pay* until there has been a lawful assessment.

We take no issue with these cases. They are not in point here, because imposition of tax must precede both assessment and payment. They then argue that "assessment" and "imposition" are one and the same thing, thereby falling back on the old contention declared unsound in the *Hertz* case, *supra*.

(b) As was said in that case, in the extract quoted in this brief, it is true that in all schemes of taxation a tax accrues or is imposed prior to its assessment, equalization, and collection, the latter representing the procedure to realize the tax.

(c) Under section 30 the executor may file the schedule of assessment during the prescribed period, at any time after his appointment. May he by deferring the assessment, defeat the tax, and this though the "unit or right" remains wholly unchanged?

Assessment and payment are contemporaneous acts. If, then, the tax is imposed before payment (*Hertz* case, *supra*), it must be imposed also before assessment. How can it be claimed that it can not be imposed until after assessment?

(d) Respondents in their brief invite attention to cases in which the law makes the assessment (p. 30), and correctly say that such is not the case here. But the law here does *impose* the tax, and imposition, and not assessment is the test of taxability. Properly applied these cases make against the executors.

(e) As the schedule must state the amount of the duty that "has accrued or shall accrue," there is a recognition that the duty or tax *may* accrue *before* the assessment.



## LIFE INCOME ESTATES OF EACH SON.

(a) Contention (2), as to the force of the probate statutes, and (3) as to the Assessment, are urged here also. They have been fully considered.

(b) In place of (1), *supra*, as to deferred date of first payment, the executors here insist there could be no right to possession until the residuary trust corpus had been both definitely determined, and also paid or delivered by the executors to themselves as trustees.

Analysis of the will demonstrates the unsoundness of this contention. It gave absolute and direct bequests, seven payable one year, one payable two years, and one payable three years, after the testator's death. It gave four quarterly payment and five annual payment life annuities; also two annual payment life annuities to a possible widow of each of two sons; and to possible surviving children of the grandson and granddaughter, \$61,250, and \$50,000, respectively. If none such survived, both the last gifts were to become part of the residuary estate. To possible surviving children of the two sons there was given in the case of each group \$200,000. Should none survive, this \$400,000 was to go to 22 named institutions.

At the end of 10 years, or sooner on conditions, the executors were to distribute to 13 named institutions a sum equal to the surplus of estate income during that period. All the residue of the estate was to go to the 13 institutions above. (R. 17-23.)

Thus we see that the corpus of the residuary trust under paragraph "eighth" of the will could not be determined until the death of both sons and grandchildren. If, then, such determination were essential to the imposition of the tax or the vesting of the income estate, the latter would have been wholly enjoyed and have ceased to exist before it could be subject to the tax. In other words this leads to the absurdity that the interests never could be taxed at all.

(c) But the identification was not at all essential to the payment of income by the executors. The maximum limit of the annual income was \$8,000 per annum. The surplus of property beyond that specifically disposed of, as to personalty, vested in the executors at their qualification (*Griffith v. Frasier*, 8 Cranch 24; *Kane v. Paul*, 14 Pet. 33; *Orr v. Gilman*, 183 U. S. 287), as did the right to take income from real estate. These sources fed the income fund. They gave instant value to the income estate, which was unconditional and therefore saved by section 8 of the Repeal act. It was never contingent and therefore not within reach of the act of June 27, 1902. But if it had been, it met every requirement of that act. That value was taxable. If the income produced was less than \$8,000 per annum, it was an advantage to the sons to have it then valued and taxed on that lesser basis of value. They may not complain of that beneficial feature.

(d) These so-called annuities were really life income estates corresponding to those before this

court in the *Vanderbilt* and *Fidelity Trust Company* cases. They were payable out of income as fast as received by the executors; nor was payment deferred by any express provision of the will. The pleadings admit that the full value of these estates was in the hands of the *executors* from the beginning, and that much thereof was income producing. Nor is it denied that the executors, *as such*, had paid over to the sons the income as received. The only claim is that it had not been transferred by the *executors* to *themselves* as *trustees* before July 1, 1902. To this we say:

(1) The will gave no authority for any such transfer. The bequest of the residue was to "my executors \* \* \* upon the following trusts"; (2) it was phrased in language of present gift, practically identical with that employed in the will in the *Vanderbilt* case *supra*; and (3) if formal transfer had been necessary, the law would have made it.

Criticism of our original brief, found on page 6 of respondent's brief, is unwarranted. Our brief, save pages 11 and 12, is devoted to taxability under the statute. Those two pages dealt with the common-law definition of "contingent" in connection with the use of that word in the Refunding act of June 27, 1902. The word is also employed by the court in the *Vanderbilt* and the *Fidelity Trust Company* cases for convenience of discussion.

The criticism of page 24 will be removed by substituting the word "payment" for the word "possession" in the phrase quoted.

To show their inapplicability to the present questions, there is attached as an appendix hereto an analysis of the different decisions of this court cited in respondent's brief. But three decisions prior to the *Jones* case relate to these questions, and the application of the principles declared therein to the facts of this case will properly dispose thereof.

We decline to follow counsel into their point "Fourth." It is either a complaint against the method adopted by Congress to terminate the Revenue act of 1898, or else a complaint that too many wealthy persons died in the year preceding July 1, 1902; and it is admitted by respondents (their brief, p. 5) that its determination will not aid to judgment.

As to their "Fifth" point, the rule of "*stare decisis*" properly applied here, makes against them. Their attempt to hold to the *Disston* case, despite the decision of this court in the *Fidelity Trust Company* case, does not seem to be entitled to serious consideration.

#### CONCLUSION.

It is submitted that the interests here were substantial and unconditional; that the "units of right" to enjoy the periodical payments had vested so as to be taxable before the Repeal and Refunding acts took effect; that the latter act does not reach this case; that even if it did these rights had all passed by will, and were held in charge and trust by the executors before July 1, 1902; and that, as the judgments below were clearly not justified by the reason assigned

by the respective courts in rendering them, so also they can not be justified by any of the additional reasons urged to support them here.

JOHN W. DAVIS,

*Solicitor General.*

WILLIAM WALLACE, Jr.,

*Assistant Attorney General.*

JANUARY, 1915.

## APPENDIX A.

### ANALYSIS OF DECISIONS OF THIS COURT CITED BY EXECUTORS.

Their brief  
page.

- 7     *Clapp v. Mason*, 94 U. S. 589, 592. (Act of 1864.)  
       Remainder dependent on life estate. By death of life tenant, remainderman became entitled to possession in 1872. Repealing act cut off tax in 1870.  
       Held not taxable.
- 7     *Wright v. Blakeslee*, 101 U. S. 174. (Same act.)  
       Like facts, save that remainderman got possession in 1865. Tax levied thereafter.  
       Held tax proper.
- 8     *Mason v. Sargent*, 104 U. S. 689. (Same act.)  
       Same as *Clapp* case, *supra*.
- 8     *Sturges v. Sargent*, 117 U. S. 363.  
       Legacy conditioned on son's living to be 21 years old, and for payment within ninety days thereafter. Son became 21 on February 21, 1872.  
       Ruled by *Sargent* case, *supra*.
- 13    *Cohen v. Brewster*, 203 U. S. 543. (Louisiana inheritance-tax law.)  
       State interpretation followed, to the effect that *after* estate closed legacies not taxable.
- 20    *Borer v. Chapmen*, 119 U. S. 588.  
       Declares right of creditor to follow assets into hands of legatees.  
       (Memo.: Evidently legacies delivered first.)

- 20 *Mackey v. Coxe*, 59 U. S. 100.

Receipt by attorney of Cherokee Nation to himself as administrator in District of Columbia held to discharge surety on his official bond as administrator.

- 20 *Hill v. Tucker*, 54 U. S. 458.

Creditor's judgment against Virginia *executors* admissible against Louisiana *executors* of same estate.

- 20 *Stacy v. Thresher*, 47 U. S. 44.

Held otherwise in case of *administrators*.

- 20 *Aspen v. Nixon*, 45 U. S. 467.

Decree in English suit between English executors and administrator of deceased claimant not competent evidence in Pennsylvania suit between American executor and another administrator of deceased claimant.

- 20 *Green v. Creighton*, 74 U. S. 90. (Cited as *Kendall v. Creighton*, by mistake.)

A foreign creditor may have distribution, among heirs, arrested.

- 20 *Hagan v. Walker*, 14 How. 29, 35.

A creditor has a lien upon estate assets that he may protect in equity.

- 20 *Griffith v. Frazier*, 8 Cranch 24.

"The appointment of an executor vests the whole personal estate in the person so appointed."

- 20 *Kane v. Paul*, 14 Pet. 33.

The appointment of an executor vests the whole personal estate in the person appointed. He holds as *trustee for the purpose* of the will, and for the purpose of administering, he is as much the proprietor of them as was the testator.

20     *Orr v. Gilman*, 183 U. S., 278.

Rights of donee under will are subordinate to administrator's contract rights. Rights only irrevocably established at distribution.



## APPENDIX B.

SEC. 30. \* \* \* The tax or duty \* \* \* shall be due and payable in one year after the death of the testator and shall be a lien and charge upon the property \* \* \* for twenty years, or until \* \* \* within that period \* \* \* paid to \* \* \* the United States \* \* \*. Every *executor* \* \* \* *having in charge or trust any legacy or distributive share, as aforesaid, shall give notice thereof, in writing, to the collector \* \* \* within thirty days after he shall have taken charge of such trust, and \* \* \* before payment and distribution to the legatees, or any parties entitled to beneficial interest therein, shall pay to the collector \* \* \* the amount of the duty or tax assessed upon such legacy or distributive share, and shall also make and render to the said collector or deputy collector a schedule, list, or statement, in duplicate, of the amount of such legacy or distributive share, together with the amount of duty which has accrued, or shall accrue, thereon, verified by his oath or affirmation \* \* \* which schedule, list, or statement shall contain the names of each and every person entitled to any beneficial interest therein, together with the clear value of such interest, the duplicate of which schedule, list, or statement shall be by him immediately delivered, and the tax thereon paid to such collector \* \* \*. And in case such executor, administrator, or trustee shall refuse or neglect to pay the aforesaid duty or tax to the collector \* \* \* within the time hereinbefore provided or \* \* \* neglect or refuse to deliver*

to said collector \* \* \* the *duplicate of the schedule*, list, or statement of such legacies, property, or personal estate, under oath, as aforesaid, or shall neglect or refuse to deliver the schedule, list, or statement of such legacies, property, or personal estate under oath, as aforesaid, *or shall deliver* to said collector or deputy collector *a false schedule* or statement of such legacies, property, or personal estate, or give the names and relationship of the persons entitled to beneficial interest therein untruly, or shall not truly and correctly set forth and state therein the clear value of such beneficial interest, or *where no administration upon such property or personal estate shall have been granted or allowed under existing laws*, the collector or deputy collector shall make out such lists and valuation as in other cases of neglect or refusal, and shall assess the duty thereon \* \* \*.

